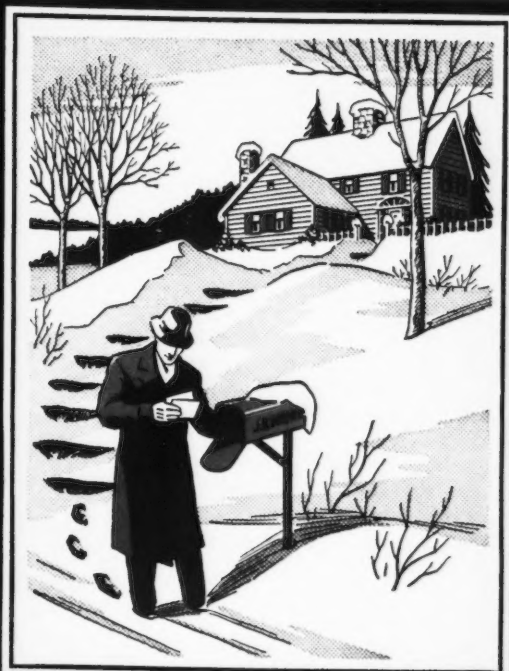


# CASE AND COMMENT



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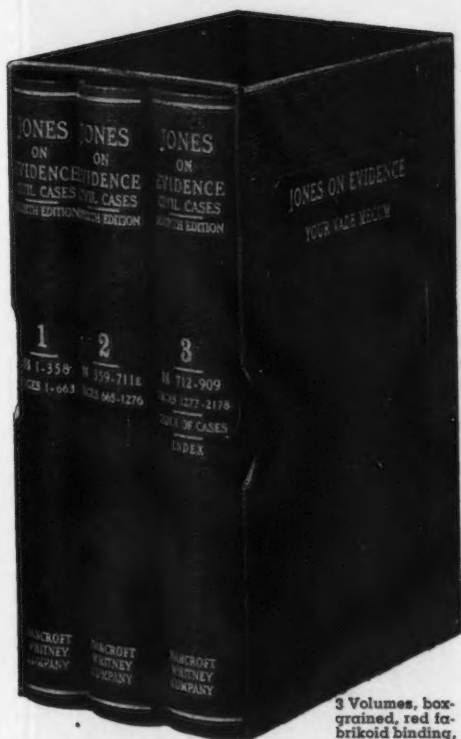
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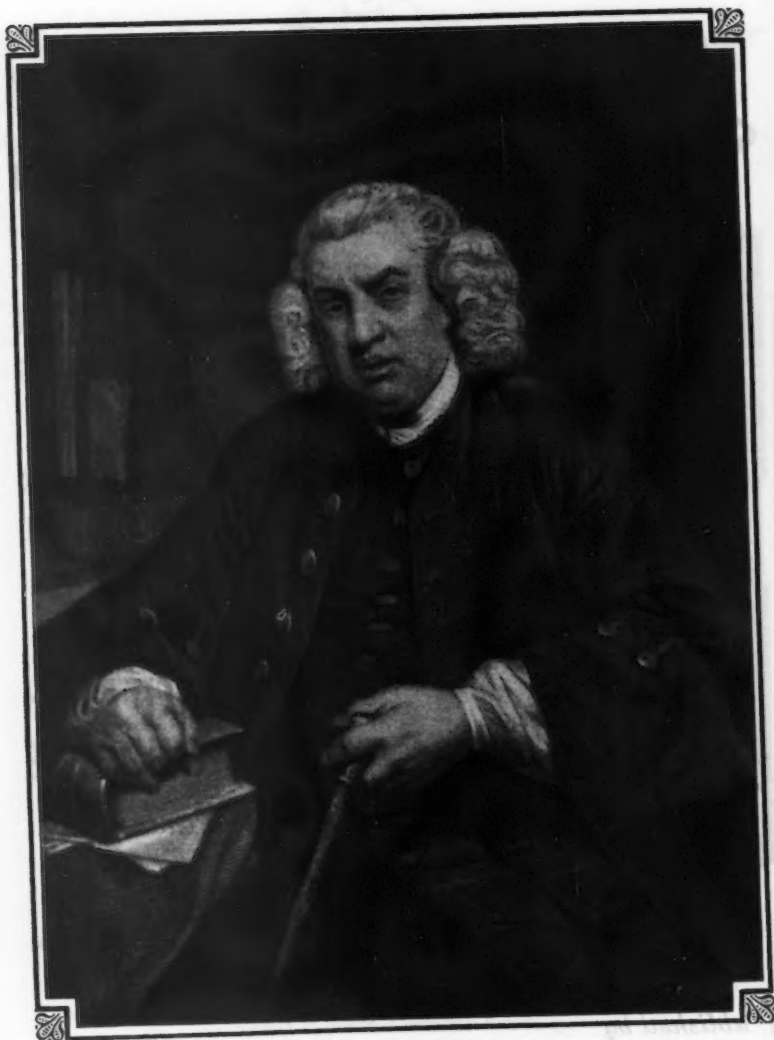
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## JOHNSON, JURISCONSULT

By EPHRAIM E. SINN

OF THE NEW HAVEN, CONNECTICUT, BAR

(Condensed from May 1934 issue of *Bulletin of the New Haven Bar Ass'n.*)

NO better indication of James Boswell's social genius can be given than that of the ready friendship which Samuel Johnson, the most celebrated literary man of the age, extended to the young unknown Scotch visitor to London. Boswell was in his early twenties, Johnson in his middle fifties when they first met in the back parlour of Davies' book-shop on the 16th day of May, 1763. Antipathy to the Scotch was a prejudice which Johnson never grew tired of expressing. WILKES: "Pray, Boswell, how much may be got in a year by an Advocate at the Scotch bar?" BOSWELL: "I believe two thousand pounds." WILKES: "How can it be possible to spend that money in Scotland?" JOHNSON: "Why, Sir, the money may be spent in England: but there is a harder question. If one man in Scotland gets possession of two thousand pounds, what remains for all the rest of the nation?"

The summer following his meeting with Johnson, Boswell sailed for Holland, ostensibly to study civil law at Utrecht. He had previously taken law courses at Edinburgh and Glasgow Universities, and under the stern tutelage of his father Lord Auchinleck (pronounced Affleck), a Judge of the Court of Session of Scotland, he had formed a familiarity with Roman law. Since Boswell became a lawyer only upon his father's insistence—he would have preferred the bright uniform and gay life of an army officer—it is neither surprising nor unprecedented that he applied himself more devotedly to wine and women than he did to *Corpus Juris Civilis* and to John Erskine's *The Principles of the*

Law of Scotland. He resided for only a short period in Utrecht. It was more agreeable to accompany the Earl Marischale of Scotland, Lord Keith, to Berlin and to converse with Rousseau and Voltaire and to admire ancient Roman art and modern feminine beauty in Italy and to encourage the hardy Corsicans fighting under General Paoli for their liberty against the tyrannical Genoese. However limited his knowledge of law may have been, upon his return from the Continent he was formally admitted to the Faculty of Advocates in Edinburgh in the summer of 1766.

Not only did the Scotch advocate direct the spigot of Johnson's conversational resources to a general discussion of the law and its practice, but he also besought the assistance of Johnson's forceful arguments in the trial of litigated cases.

The impropriety of seeking clients is axiomatic. The topic is discussed in the *Life* with a characteristic flash of Johnsonian wit: JOHNSON: "Sir, it is wrong to stir up law-suits; but when once it is certain that a law-suit is to go on, there is nothing wrong in a lawyer's endeavouring that he shall have the benefit, rather than another." BOSWELL: "You would not solicit employment, Sir, if you were a lawyer." JOHNSON: "No, Sir, but not because I should think it wrong, but because I should disdain it." This was a good distinction which will be felt by men of just pride. He proceeded: "However, I would not have a lawyer to be wanting to himself in using fair means. I would have him to inject a little hint now and

then, to prevent his being overlooked."

The layman commonly asserts that hypocrisy is an inherent evil of the legal profession. Let such calumny be silenced for all times by the following two passages:

We talked of the practice of the law. Sir William Forbes said, he thought an honest lawyer should never undertake a cause which he was satisfied was not a just one. "Sir, (said Mr. Johnson,) a lawyer has no business with the justice or injustice of the cause which he undertakes, unless his client asks his opinion, and then he is bound to give it honestly. The justice or injustice of the cause is to be decided by the judge. Consider, sir; what is the purpose of courts of justice? It is, that every man may have his cause fairly tried, by men appointed to try causes. A lawyer is not to tell what he knows to be a lie; he is not to produce what he knows to be a false deed; but he is not to usurp the province of the jury and of the judge, and determine what shall be the effect of the evidence,—what shall be the result of legal argument. As it rarely happens that a man is fit to plead his own cause, lawyers are a class of the community, who, by study and experience, have acquired the art and power of arranging evidence, and of applying to the points at issue what the law has settled. A lawyer is to do for his client all that his client might fairly do for himself, if he could. If by a superiority of attention, of knowledge, of skill, and a better method of communication, he has the advantage of his adversary, it is an advantage to which he is entitled. There must always be some advantage, on one side or other; and it is better that advantage should be had by talents, than by chance. If lawyers were to undertake no causes till they were sure they were just, a man might be precluded altogether from a trial of his claim, though, were it judicially examined, it might be found a very just claim."—This was sound practical doctrine, and rationally repressed a too refined scrupulosity of conscience.

I asked him whether, as a moralist, he did not think that the practice of the law, in some degree, hurt the nice feeling of honesty. JOHNSON: "Why no, Sir, if you act properly. You are not to deceive your clients with false representations of your opinion: you

are not to tell lies to a judge." BOSWELL: "But what do you think of supporting a cause which you know to be bad?" JOHNSON: Sir, you do not know it to be good or bad till the Judge determines it. I have said that you are to state facts fairly; so that your thinking, or what you call knowing, a cause to be bad, must be from reasoning, must be from your supposing your arguments to be weak and inconclusive. But, Sir, that is not enough. An argument which does not convince him, why then, Sir, you are wrong, and he is right. It is his business to judge; and you are not to be confident in your own opinion that a cause is bad, but to say all you can for your client, and then hear the Judge's opinion." BOSWELL: "But, Sir, does not affecting a warmth when you have no warmth, and appearing to be clearly of one opinion when you are in reality of another opinion, does not such dissimulation impair one's honesty? Is there not some danger that a lawyer may put on the same mask in common life, in the intercourse with his friends?" JOHNSON: "why no, Sir. Everybody knows you are paid for affecting warmth for your client; and it is, therefore, properly no dissimulation; the moment you come from the bar you resume your usual behavior. Sir, a man will no more carry the artifice of the bar into the common intercourse of society, than a man who is paid for tumbling upon his hands will continue to tumble upon his hands when he should walk on his feet."

On the same evening, he would not allow that the private life of a judge, in England, was required to be so strictly decorous as I supposed. "Why then, sir, (said I,) according to your account, an English judge may just live like a gentleman."—JOHNSON: "Yes, sir,—if he can."

This was a period, allow me to forewarn the reader, when, as Governor

Cross has so aptly reminded us, we are taken beyond the reticence and circumlocution of the Victorian era to the free manners and direct speech of the Georges:

He gave us an entertaining account of Bet Flint, a woman of the town, who, with some eccentric talents and much effrontery forced herself upon his acquaintance. "Bet (said he,) wrote her own Life in verse, which she brought to me, wishing that I would furnish her with a Preface to it, (laughing.) I used to say of her that she was generally slut and drunkard; occasionally, whore and thief. She had, however, genteel lodgings, a spinnet on which she played, and a boy that walked before her chair. Poor Bet was taken up on a charge of stealing a counterpane, and tried at the Old Bailey. Chief Justice—who loved a wench, summed up favourably, and she was acquitted. After which Bet said, with a gay and satisfied air, "Now that the counterpane is my own, I shall make a petticoat of it."

Up until 1760, it is curious to be informed, the terms of all judges expired with the death of the king and their reappointments were dependent upon the wish of the new sovereign. Of this new law, operative then for fifteen years, Johnson, between the gulps of his breakfast tea, vehemently disapproved. JOHNSON: "There is no reason why a Judge should hold his office for life, more than any other person in publick trust. A Judge may be partial otherwise than to the Crown: we have seen Judges partial to the populace. A Judge may become corrupt, and yet there may not be legal evidence against him. A Judge may become froward from age. A Judge may grow unfit for his office in many ways. It was desirable that there should be a possibility of being delivered from him by a new King.

Had Johnson been given the opportunity to apply his capacious mind exclusively to the study and practice of the law, a brilliant career at the Bar would have been followed by unsurpassed distinction on the bench. So scholarly a lawyer as Sir William

Scott, afterwards Lord Stowell, deplored that such unequalled ability was withheld from the law. Upon the death of Lord Lichfield, he remarked to the Great Cham of Literature: "What a pity it is, Sir, that you did not follow the profession of the law. You might have been Lord Chancellor of Great Britain, and attained to the dignity of the peerage; and now that the title of Lichfield, your native city, is extinct, you might have had it." This comment so agitated Johnson that he angrily exclaimed: "Why will you vex me by suggesting this, when it is too late?"

Sir William, some may say, was only flattering an aging friend. How sincere the noble barrister was we may gather by an examination of Johnson's legal contributions. Boswell's recognition of the efficacy of Johnson's argumentative skill led him to incorporate in the Life Johnson's discussion on a number of very interesting litigated cases. Apparently in that age lawyers were as prone to sue in libel as they are today in negligence.

In the Case of the Society of Solicitors v. Robertson, Boswell represented the defendant.

He laughed heartily at a ludicrous action in the Court of Session, in which I was Counsel. The Society of Procurators, or Attornies, entitled to practice in the inferior courts at Edinburgh, had obtained a royal charter, in which they had taken care to have their ancient designation of Procurators changed into that of Solicitors, from a notion, as they supposed, that it was more genteel; and this new title they displaced by a publick advertisement for a General Meeting at their Hall.

It has been said that the Scottish nation is not distinguished for humour; and, indeed, what happened on this occasion may in some degree justify the remark; for although this society had contrived to make themselves a very prominent object for the ridicule of such as might stoop to it, the only joke to which it gave rise, was the following paragraph, sent to the newspaper called *The Caledonian Mercury*:

"A correspondent informs us that the Worshipful Society of Chaldeans, Cadies, or Running Stationers of this city are re-

solved, in imitation, and encouraged by the singular success of their brethren, of an equally respectable Society, to apply for a Charter of their Privileges, particularly of the sole privilege of Procuring, in the most extensive sense of the word, exclusive of chairmen, porters, penny-post men, and other inferior ranks; their brethren the R-Y-L-S-LL-RS, alias P-C-RS, before the Inferiour Courts of this City, always excepted.

"Should the Worshipful Society be successful, they are farther resolved not to be puffed up thereby, but to demean themselves with more equanimity and decency than their R-Y-L, learned, and very modest brethren above mentioned have done, upon their late dignification and exaltation."

A majority of the members of the Society prosecuted Mr. Robertson, the publisher of the paper, for damages; and the first judgment of the whole Court very wisely dismissed the action: *Solventur risu tabulae, tu missus abibis*. But a new trial or review was granted upon a petition, according to the forms in Scotland. This petition I was engaged to answer, and Dr. Johnson with great alacrity furnished me this evening with what follows:

"All injury is either of the person, the fortune, or the fame. Now it is a certain thing, it is proverbially known, that a jest breaks no bones. They never have gained half-a-crown less in the whole profession since this mischievous paragraph has appeared; and, as to their reputation, What is their reputation but an instrument of getting money? If, therefore, they have lost no money, the question upon reputation may be answered by a very old position.—*De minimis non curat Praetor*.

"Whether there was, or was not, an *animus injuriandi*, is not worth inquiring, if no *injuria* can be proved. But the truth is, there was no *animus injuriandi*. It was only an *animus irritandi*, which, happening to be exercised upon a genus *irritabile*, produced unexpected violence of resentment. Their irritability arose only from an opinion of their own importance, and their delight in their new exaltation. What might have been borne by a Procurator could not be borne by a Solicitor. Your Lordships well know, that honores mutant mores. Titles and dignities play strongly on the fancy. As a madman is apt to think himself grown suddenly great, so he that grows suddenly great is apt to borrow a little from the madman. To co-operate with their resentment would be to promote their phrenzy; nor is it possible to guess to what they might proceed, if to the new

title of Solicitor, should be added the elation of victory and triumph.

"We consider your Lordships as the protectors of our rights, and the guardians of our virtues; but believe it not included in your high office, that you should flatter our vices, or solace our vanity; and, as vanity only dictates this prosecution, it is humbly hoped your Lordships will dismiss it."

I am ashamed to mention, that the Court, by a plurality of voices, without having a single additional circumstance before them, reversed their own judgment, made a serious matter of this dull and foolish joke, and adjudged Mr. Robertson to pay to the Society five pounds (sterling money) and costs of suit. The decision will seem strange to English lawyers.

Dr. Memis v. The Royal Infirmary of Aberdeen was another case based on libel, and Boswell again appeared for the defendant. The case was first tried before Boswell's father; it was dismissed as being frivolous. Upon appeal to the entire bench, Lord Auchinleck's dismissal was affirmed.

The facts of the case are disclosed in Boswell's letter to Dr. Johnson:

"But I am now to apply to you for immediate aid in my profession, which you have never refused to grant when I requested it. I enclose you a petition for Dr. Memis, a physician at Aberdeen, in which Sir John Dalrymple has exerted his talents, and which I am to answer as Counsel for the managers of the Royal Infirmary in that city. Mr. Jopp, the Provost, who delivered to you your freedom, is one of my clients, and, as a citizen of Aberdeen, you will support him.

"The fact is shortly this. In a translation of the charter of the Infirmary from Latin into English, made under the authority of the managers, the same phrase in the original is in one place rendered Physician, but when applied to Dr. Memis is rendered Doctor of Medicine. Dr. Memis complained of this before the translation was printed, but was not indulged with having it altered; and he has brought an action for damages, on account of a supposed injury, as if the designation given to him was an inferiour one, tending to make it be supposed he is not a Physician, and, consequently, to hurt his practice. My father has dismissed the action as groundless, and now he has appealed to the whole Court."

Johnson thought very little of the merits of the case, as his responsive letter reveals:

"Dr. Memis's question is so narrow as to allow no speculation; and I have no facts before me but those which his advocate has produced against you.

"I consulted this morning the President of the London College of Physicians, who says, that with us, Doctor of Physick (we do not say Doctor of Medicine) is the highest title that a practitioner of physick can have; that Doctor implies not only physician, but teacher of physics; that every Doctor is legally a physician; but no man, not a Doctor, can practice physick but by licence particularly granted. The Doctorate is a licence of itself. It seems to us a very slender cause of prosecution. . . ."

A few months later Boswell visited London. A good dinner at the Mitre put Johnson in a complacent frame of mind, and Bozzy felt free to renew his request for aid. The Doctor dictated his arguments:

"There are but two reasons for which a physician can decline the title of Doctor of Medicine, because he supposes himself disgraced by the doctorship, or supposes the doctorship disgraced by himself. To be disgraced by a title which he shares in common with every illustrious name of his profession, with Boerhaave, with Arbuthnot, and with Cullen, can surely diminish no man's reputation. It is, I suppose, to the doctorate, from which he shrinks, that he owes his right of practising physick. A doctor of Medicine is a physician under the protection of the laws, and by the stamp of authority. The physician, who is not a Doctor, usurps a profession, and is authorized only by himself to decide upon health and sickness, and life and death. That this gentleman is a Doctor, his diploma makes evident; a diploma not obtruded upon him, but obtained by solicitation, and for which fees were paid. With what countenance any man can refuse the title which he has either begged or bought, is not easily discovered.

"All verbal injury must comprise in it either some false position, or some unnecessary declaration of defamatory truth. That in calling him Doctor, a false appellation was given him, he himself will not pretend, who at the same time that he complains of the title, would be offended if we supposed him to be not a Doctor. If the title of Doctor be a defamatory truth, it is time to dissolve our colleges; for why

should the publick give salaries to men whose approbation is reproach? It may likewise deserve the notice of the publick to consider what help can be given to the professors of physick, who all share with this unhappy gentleman the ignominious appellation, and of whom the very boys in the street are not afraid to say, There goes the Doctor."

Boswell wrote to Dr. Johnson of the favorable outcome of this case, but with characteristic candor, disagreed with the opinion of the court!

"Dr. Memis's cause was determined against him, with 40 pounds costs. The Lord President, and two other of the Judges, dissented from the majority, upon this ground;—that although there may have been no intention to injure him by calling him Doctor of Medicine, instead of Physician, yet, as he remonstrated against the designation before the charter was printed off, and represented that it was disagreeable, and even hurtful to him, it was ill-natured to refuse to alter it, and let him have the designation to which he was certainly entitled. My own opinion is, that our court has judged wrong. The defendants were in mala fide, to persist in naming him in a way that he disliked. You remember poor Goldsmith, when he grew important, and wished to appear Doctor Major, could not bear your calling him Goldy. Would it not have been wrong to have named him so in your Preface to Shakespeare, or in any serious permanent writing of any sort? The difficulty is, whether an action should be allowed on such petty wrongs. *De Minimis non curat lex.*"

About five years before the irascible and litigious physician brought his complaint to the court, Boswell defended a Scotch schoolmaster named Hastie whose adherence to the injunction Spare the rod, spoil the child impelled the parents of the chastised pupils to seek his removal. To Boswell's request for help Johnson replied:

"The charge is, that he has used immoderate and cruel correction. Correction, in itself is not cruel; children, being not reasonable, can be governed only by fear. To impress this fear, is therefore one of the first duties of those who have the care of children. It is the duty of a parent; and has never been thought inconsistent

with parental tenderness. It is the duty of a master, who is in his highest exaltation when he is loco parentis. The degrees of scholastic, as of military punishment, no stated rules can ascertain. It must be enforced till it overpowers temptation; till stubbornness becomes flexible, and perverseness regular. Custom and reason have, indeed, set some bounds to scholastic penalties. The schoolmaster inflicts no capital punishments; nor enforces his edicts by either death or mutilation. The civil law has wisely determined, that a master who strikes at a scholar's eye shall be considered as criminal. But punishments, however severe, that produce no lasting evil, may be just and reasonable, because they may be necessary. Let it be considered that his scholars are either dispersed at large in the world, or continue to inhabit the place in which they were bred. Those who are dispersed cannot be found; those who remain are the sons of his persecutors, and are not likely to support a man to whom their fathers are enemies. If it be supposed that the enmity of their fathers proves the justice of the charge, it must be considered how often experience shews us, that men who are angry on one ground will accuse on another; with how little kindness, in a town of low trade, a man who lives by learning is regarded; and how implicitly, where the inhabitants are not very rich, a rich man is hearkened to and followed. In a place like Campbelltown, it is easy for one of the principal inhabitants to make a party. It is easy for that party to heat themselves with imaginary grievances. It is easy for them to oppress a man poorer than themselves; and natural to assert the dignity of riches, by persisting in oppression. The argument which attempts to prove the impropriety of restoring him to the school, by alledging that he has lost the confidence of the people, is not the subject of juridical consideration; for he is to suffer, if he must suffer, not for their judgment, but for his own actions. It may be convenient for them to have another master; but it is a convenience of their own making. It would be likewise convenient for him to find another school; but this convenience he cannot obtain. The question is not what is now convenient, but what is generally right."

The House of Lords was apparently uninfluenced by the strength of these arguments, for the decision of the Court of Session was reversed. Or possibly the members of that august

tribunal were swayed by bitter recollections of their own floggings.

Johnson's interpretation of the phrase, "scandal of a heinous nature," was expressed quite informally.

"I mentioned a cause in which I had appeared as counsel at the bar of the General Assembly of the Church of Scotland, where a Probationer, (as one licensed to preach, but not yet ordained, is called), was opposed in his application to be inducted, because it was alledged that he had been guilty of fornication five years before. JOHNSON: 'Why, Sir, if he has repented, it is not a sufficient objection. A man who is good enough to go to heaven, is good enough to be a clergyman.' This was a humane and liberal sentiment. But the character of a clergyman is more sacred than that of an ordinary Christian. As he is to instruct with authority, he should be regarded with reverence, as one upon whom divine truth has had the effect to set him above such transgressions, as men less exalted by spiritual habits, and yet upon the whole not to be excluded from heaven, have been betrayed into by the predominance of passion. That clergymen may be considered as sinners in general, as all men are, cannot be denied; but this reflection will not counteract their good precepts so much, as the absolute knowledge of their having been guilty of certain specific immoral acts. I told him, that by the rules of the Church of Scotland, in their Book of Discipline, if a scandal, as it is called, is not prosecuted for five years, it cannot afterwards be proceeded upon, 'unless it be of a heinous nature, or again become flagrant;' and that hence a question arose, whether fornication was a sin of a heinous nature; and that I had maintained, that it did not deserve that epithet, in as much as it was not one of those sins which argue very great depravity of heart; in short, was not, in the general acceptation of mankind, a heinous sin. A heinous sin is that for which a man is punished with death or banishment.' BOSWELL: 'But, Sir, after I had argued that it was not a heinous sin, an old clergyman rose up, and repeating the text of scripture denouncing judgment against whoremongers, asked, whether, considering this, there could be any doubt of fornication being a heinous sin.' JOHNSON: 'Why, Sir, observe the word whoremonger. Every sin if persisted in, will become heinous. Whoremonger is a dealer in whores, as ironmonger is a dealer in iron. But as you don't call a man an ironmonger for buying and selling a penknife; so you don't call a man a whoremonger for getting one wench with child.'"

## COUNTRY LAWYER\*

By F. LYMAN WINDOLPH

OF THE LANCASTER, PENNSYLVANIA, BAR

I CAME to the bar more than twenty-five years ago in the small American city near which I was born and in which I was brought up and educated. It had then a population of less than fifty thousand, but it was the center of a rich agricultural county so bounded by hills and by a great river as to form a naturally distinct geographical and political unit. The county had been settled half a century before the Revolution, and had existed as a separate judicial district for almost a century. In its courts James Buchanan, Thaddeus Stevens, and a score of other great lawyers had practiced, and at the time of my admission to practice there were members of its bar who not only remembered the giants of other days but who had shared in and were able to transmit a legal tradition which stretched unbroken to 1729. In this community I have passed the whole of my professional life. In the course of it I have perforce written deeds and wills, organized corporations and issued bonds, settled estates and searched titles, and tried every sort of civil action from replevin to divorce and every sort of criminal case from assault and battery to murder. I have, in short, for better or worse lived the life of what the profession knows as a country lawyer.

Now the true test of the country lawyer is not the size or importance of the community in which he does his work, but rather the sort of work which he does and the sort of people for whom he does it. Some years ago I met a member of the bar of New

York who was employed by a society engaged solely in the apprehension and prosecution of men who had married and deserted Jewish women. From year's end to year's end he traveled from place to place trying desertion cases, and I venture to say that he knew more at first hand about the comparative law of desertion throughout the United States than any authority living. Such a man is obviously not a country lawyer, no matter where he may practice. On the other hand I remember with pleasure a conversation which I had not long ago with an old man who had practised for almost half a century in a remote county, whose largest town has less than three thousand inhabitants. In the course of our conversation he referred to himself as a country lawyer, and a moment afterward, in making some reference to me, made it clear that he regarded me as exactly the opposite. I think, however, that he was mistaken. If a lawyer performs every sort of legal service for every sort of client—the poor and the lowly as well as the rich and the well born—he is, within my definition at least, a country lawyer, and no arbitrary distinction based on density of population or the like can make him anything else.

Every sort of legal service for every sort of client—the very phrase brings to my mind a succession of pictures, some of them amusing, some of them tinged with sadness and tragedy, and some of them altogether gracious and lovely. There are memories, such as must come to every lawyer, of the routine of consultations and settlements, of trials by jury and hearings before magistrates, of wills made in extremis, and secret sorrows and disgraces un-

\* Chapter I of Mr. Windolph's new book *The Country Lawyer*, \$1.50, University of Pennsylvania Press, Philadelphia.

known to the world at large. There are likewise memories—no less clear, but less directly connected with the law—of long drives to sales, a legal brother beside me in a buggy hired at a livery stable, and of cheerful talk about men and books as our horse jogged through the quiet countryside; of the sales themselves, with half a township as witnesses if not as bidders, the voice of the auctioneer rising and falling, and his chosen clerk keeping a record of purchases and making change with miraculous efficiency; of road views, where a keg of beer was as essential a part of the proceedings as the presence of the viewers themselves; and of a score of other aspects and incidents of rural civilization, some of which have passed away never to return, during the term of my own practice.

Of these recollections there is none which gives me greater pleasure than that of the country surveyor at work. Ordinarily there is no reason why a lawyer should be present at the making of a survey, but on one or two occasions some real or anticipated dispute about the meaning or effect of a deed has made it desirable that I should actually see the lines run on the ground. Now all our land titles are founded upon grants from the original proprietor, and just, as in Eastern mythology, the world rests upon the back of an elephant which in turn stands upon a turtle, so the proprietor obtained his title from King Charles II. It is as much a piece of impertinence to ask the source of the King's title as to inquire what the turtle stands on. Of course not every piece of land may actually be traced to the original proprietor, on account of lost deeds or the like, but many of them may. I am familiar with one tract, oddly enough a small one, whose present description is precisely the same as that contained in the first grant.

*Twelve*

The running of boundary lines necessarily depends upon the location of landmarks, and the true worth of a country surveyor depends much less upon his skill with a transit than upon the accuracy of his information—necessarily acquired either by personal experience or by tradition—as to where these landmarks are to be found. The deeds refer to them only in general terms—"beginning at a white oak, a corner of lands of John Doe," thence by a certain course so many perches to "a stone," thence to "an iron pin," or to "a black oak," and so on. With such a description, a city-bred surveyor, however expert he may be, is as helpless in the setting of a disputed fence as a lawyer. I have stood on a wooded hillside looking for a stone—such a stone as might seem to serve as a monument—but seeing only white oaks (disturbingly numerous) and feeling only a sense of the futility of learning. Confronted by such a problem, the country surveyor lays aside for a moment the calling in which he is perhaps compelled to earn the greater part of his livelihood, and, not without a proper consciousness of the burden of responsibility resting upon him, comes grandly into his own. The question involved is rather of fact than of law, and its solution depends upon knowledge possessed by him alone. Surely there is nothing finer than the air with which, ignoring suggestions, he strides—it would be a slander to say jumps—into a bramble bush and scratches out, not his eyes, but the very stone which was pointed out to him by his grandfather, also a surveyor, half a century before.

On the witness stand in a courtroom he is a far less satisfying figure than on his native hills, because, all things being equal, erudition is always less satisfying than knowledge. In the country his worth and skill are self-demonstrating—the event itself

speaks. But before a judge, and jury he must justify himself and his profession in words, and he feels that in order to do so he must be given an opportunity by the lawyer who calls him as a witness to explain the variations in the magnetic compass. This is a mysterious subject, whose relation to the actual practice of surveying may, for all I know, be slight or none, but every country surveyor expects to have his qualifications as an expert tested in court by being interrogated about it. The question is no sooner on the lips of counsel than the answer is ready. In the year 1700 the magnetic compass pointed five degrees to the west of the true geographical north. Between 1700 and 1800 it moved four degrees to the eastward and so on. I doubt whether any respectable number of jurors have been much enlightened by the recital, but a disappointed witness sometimes means in the end a disappointed client, and five minutes devoted to the eccentricities of the compass are not too big a price to pay in order to put a witness at his ease.

It has been said that the trial of cases is the culmination of the lawyer's art. In the matter of dramatic intensity and interest, murder cases, as much in the country as elsewhere, are in a class by themselves. It is true that before country judges the point at issue is, as a rule—whether wisely or not—tried much more strictly than in the big cities and that witnesses are more rarely permitted to unfold in their testimony the entire stories of their lives. In my own county I am satisfied that the trial of Thaw, for example, would not have lasted at the most more than three days. It is likewise true that juries in murder cases are secured much more rapidly in the country than in cities. The original theory of trial by jury was that an accused person ought to be tried by a jury selected from his vicinage or

neighborhood, because the jurors, being his neighbors, would be likely on that account to know something about him at first hand. Some tradition of this theory has persisted in the country, so that an intimate and detailed examination of prospective jurors with a view to uncovering some possible bias is not ordinarily permitted. Indeed—and apart from any theory—it would be impossible in many rural jurisdictions to secure twelve citizens, who, if the defendant was a native of their county, did not know him or at least know something about him.

But making due allowance for the incidental differences in practice which tend to make a murder trial in the country less sensational than elsewhere, the essentials of legal solemnity and human interest necessarily remain. In my state the formal arraignment of the accused has been abolished in all cases except trials for murder and there is a strangeness, as of another age, in hearing the clerk ask the prisoner how he will be tried and in hearing the prisoner, usually prompted by his counsel reply, "By God and my country." Then, too, the selection of a jury, though never a question be asked by the attorneys on either side, presents to the prisoner and his counsel a series of decisions on which life and death literally depend, and each of which seems more momentous than the last until only the twelfth juror remains to be chosen. The prospective jurymen, on his name being called, presents himself at the entrance to the jury box. The clerk, standing facing him, asks the three time-honored questions—whether he has such conscientious scruples as would prevent him from rendering a verdict of guilty of murder in the first degree, the penalty being death, if the evidence should warrant the same; whether he has formed such an opinion as would pre-

vent him from rendering a verdict in accordance with the evidence; and whether he can be perfectly impartial between the Commonwealth and the prisoner. If the answers of the juror do not disqualify him, the clerk then says, "Juror, look upon the prisoner. Prisoner, look upon the juror. How say you, challenged or not challenged?" If the prisoner's attorney know his business and has had reasonably good luck, a few, though perhaps a very few, of his original twenty peremptory challenges remain. There is a tense moment during which he consults his jury list or engages in a whispered colloquy with his client. If the juror comes from the regular panel, counsel for the defense probably knows something about him, but if there has been a special venire, as usually happens before the twelfth juror has been selected in a murder case, there is nothing to do except to judge by appearances and be governed accordingly. Old practitioners will tell you that in such cases butchers, carpenters, and all those who habitually handle edged tools are to be avoided. However kindly they may be personally, they will bring in verdicts of murder in the first degree more readily than other men. The juror looks about him, uncertain whether to walk into the jury box or to return to his seat. Though the other eleven jurors would vote to acquit, this man may persuade them to find a verdict of guilty. On the other hand, his voice alone may save the defendant. Everything seems to depend upon him. "Pass the juror," says counsel for the accused. The judge looks up quickly and clears his throat. There is a long sigh from the spectators. The trial is ready to begin.

If the trial of cases is, for those who participate in it, a universal experience wherever the jury system is in force, there are other activities of the country lawyer which have no parallel

in the practice of his brothers in the large cities. There is, for instance, the work of conveyancing—an art which is inextricably connected in my mind with a local custom known as "the first of April rush." It is said that the date was determined in the first place by the fact that tobacco—which for time out of mind has been one of our principal crops—was invariably paid for in the spring; but be that as it may, the custom itself resulted from the existence of a state of society sufficiently simple to permit a farmer to transact the whole of his annual worldly business, other than farming, between the morning and evening of a single day. From one April to another he lived entirely upon credit, paying no bills and expecting none to be paid. On the first of every April, rain or shine, he went to the county seat, and having established himself at a hotel, called upon his banker and withdrew enough money to meet his needs. Sometimes, indeed, he withdrew his entire balance in order to assure himself that it had been safely kept, and, because of the crowd within, counted it sitting on the curb in front of the bank. When his financial arrangements had been completed, he set about meeting his debtors and creditors, seeking them at the offices of their lawyers and being sought by them at his lawyer's office, paying only in cash and receiving payment in like manner. When evening fell he was in the enviable condition of the Miller of the Dee—all his accounts were closed. He returned his funds to the bank, which had obligingly remained open to receive them, and went home for one year.

This is "the first of April rush," as it was when I came to the bar and as it had been for upward of a century before. It is not exactly so now—the use of checks is much greater than formerly and the crowds on the streets

are smaller. Village banks and stores have taken over a considerable part of the business. There are fewer entire families in attendance and fewer hangers-on. To a large extent, however, the principle of an annual settlement day remains. It began with the farmer but it did not end there. In a city of sixty thousand inhabitants, nine leases out of every ten run from April to April. All mortgages, except by special agreement, are made payable on April first. Not only are the conveyances of all farms fixed for that day, but of a large proportion of properties in the city as well.

The result is bedlam indescribable. There are titles to search, leases, deeds, and mortgages to prepare and have executed, liens to be satisfied, and settlements to attend. Let no sophisticated metropolitan practitioner talk to me in this connection about the obligations of efficiency. Nothing is harder to change than a custom, and against this particular custom the veriest efficiency expert would break himself in vain. Of course, the requisite legal papers may be prepared in advance, but there is no way to compel a seller to sign and deliver a deed until the buyer is ready to pay over the purchase price, and no way to compel a buyer to pay the stipulated price until he is in funds and the seller is able to deliver possession. I have never been able to complete more than six or at the most eight settlements in a day, and yet on a certain twenty-fifth of March a number of years ago I was confronted with one hundred and eight settlements supposedly to be made on the first of April by myself and a single assistant. In such a situation there is nothing to do except to get to the office as early as one can in the morning, stay there as long as one can stay awake, and hope for the best. The great day will pass, what remains undone will be finished somehow in the days that fol-

low, and peace will come with the spring.

And yet, when the tumult and the shouting have died and the buyers and sellers have departed, not all the incidents of the April season are vexing or unpleasant ones. I remember in particular an old man, a farmer, who for many years made me his annual visit on the first of April. He had a small amount of money invested in mortgages, and invariably there was some change in his investments about which he wished to consult me, or at least the necessity for a trip to the courthouse in order to enter a receipt for principal paid on account. On a certain first of April I saw him early in the morning, sitting as usual in the reception room of my office, but I knew of no business of his requiring my attention that year and I was too busy to speak to him at length. He waited patiently for me all morning, and though I have no doubt that he went for dinner during the noon hour, he must have returned to his place immediately afterward, because I noticed him there from time to time during the course of the afternoon. Evening had fallen and the crowds had melted away before I had an opportunity to invite him into my private office for an interview. When we had shaken hands and seated ourselves, I asked him to tell me what business had brought him to the city. I shall never know whether he had come to value our annual conferences for their own sake and was unwilling to admit even to himself that a time had come when there was a less valid reason for them than formerly, or whether in the simplicity of his heart he credited me with a greater store of wisdom than I possess, but he answered only that he was considering buying a new plough, and that he wanted to know what I thought about it.

Now I am unfortunately blessed

with no knowledge whatever about farming, but we had, nevertheless, an unhurried talk for perhaps ten minutes about farming in general and ploughs in particular. In the end we decided to buy the plough. I went to the outer door with my friend and said good-bye to him there, intending to return to my desk. The stenographers had left for the day and the office was empty. Suddenly I realized that I was very tired and that it was time to stop work. I got my hat, locked the door, and walked out into the April twilight with wet eyes.

Four ducks on a pond,  
A grass-bank beyond,  
A blue sky of spring,  
White clouds on the wing;  
What a little thing  
To remember for years—  
To remember with tears.

I will not say that one who is not touched and humbled by such an incident as this is a bad man, but I think that he will never be entirely happy or successful as a country lawyer. A measure of compensation for small fees and for the lack of great causes is to be found in that sense of legal totality which comes from a general practice. There is a picture—surely familiar to every lawyer who studied for his profession in the office of a preceptor—which shows the law as a gigantic tree, its roots buried in the common earth and its top reaching to the heavens. From its trunk grow the alternating branches of property and persons, of contracts and torts, of crimes, remedies, and government.

But the chief compensation of the country lawyer is the richness of his share in the heritage which belongs of right to all the members of the three learned professions. Doubtless in the old sense there are no longer any learned professions. The architect, the engineer, the journalist, the scientist, and a hundred others have, indeed, fed as well upon learning as the physician, the lawyer, and the divine, but the old magic authority of learning—the old faith that education necessarily, or at least presumably, brings wisdom and goodness to its possessor—is as dear as that benefit of clergy which once served, with whatever injustice, to express it. And yet, because the great experiences of men are still births and deaths, their great concerns health, liberty, and happiness, and their great aim salvation, the three learned professions remain as obviously as ever in a place apart. After all, learning was never more than one of their incidental distinctions. Now as always their true distinction lies less in their achievements than in their purposes and in the resulting intimacy and beauty of those human relationships which occur so frequently in the life of the country lawyer. Whether or not his training has made him learned, his experience ought to make him wise and good.

It is not true that only God can make a tree. The Devil could make a tree if he tried, but only God can make men and women. With all of them we stand in jeopardy, and by some of them, it seems to me, He saves us every hour.

#### WHAT YOUNG LAWYERS WANT

THEY are ambitious for association with some one already established at the Bar, someone with whom they can apprentice and learn and grow in the practice. They want a chance for a decent livelihood, a chance to make a contribution, to acquire a moderate amount of success and prestige in honorable ways.

—DEAN FRANCIS M. SHEA, *Buffalo Law School*.

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**W**ILLIAM BARTON HALE, chairman of the board of The Lawyers Co-operative Publishing Company, died in Rochester, New York, December 27th, after a long illness. + He was an alumnus of the University of Rochester, A.B. 1885, A.M. 1888. + He was admitted to the New York Bar in 1887, and was in active practice of law until 1900, when his legal publishing interests required all his time and he became president of The Lawyers Co-operative Publishing Company. + In addition to his legal publishing interests, he was active in many fields of finance, education and philanthropy. + At the time of his death he was chairman of the board of the Mechanics Savings Bank and a director of the Genesee Valley Trust Company of Rochester, trustee of the University of Rochester, trustee and chairman of the board of the Colgate-Rochester Divinity School, trustee and secretary of the Rochester Athenaeum and Mechanics Institute and member of the board of the American Baptist Home Mission Society. + He was a member of Phi Beta Kappa, Delta Kappa Epsilon and the American and New York Bar Associations.

## "FOUND" DOCUMENTS

By ALBERT S. OSBORN\*

THE early life histories of disputed documents often duplicate each other in a surprising manner, and this is particularly true of documents that finally are found to be unmistakably fraudulent. Many of these documents make a very late appearance and it becomes necessary to explain the delay. This duplication of excuses and explanations is no doubt due to the uniformity of the manifestations of human nature. The psychologists tell us that under similar stimulus many different human minds will act in much the same manner.

The similarities in these histories of documents are: (1) the alleged unusual conditions surrounding the finding of the document—in bible, hymn book, or ordinary book, under carpet or linoleum, in picture-frame back of picture, inside of old linen, in old, worn purse or notebook, written on one of the pages of old memorandum book, received anonymously by mail or found in street letter-box; (2) the unknown and unexplained custody of the document; (3) the delay, and the incredible explanation of the delay, in bringing the document forward; (4) the suspicious character, absence or decease of the witnesses; (5) the alleged reasons why the document was drawn—anticipating criticism of the document—and arguments in the document itself defending it; (6) unusual, peculiar and inappropriate paper on which the document was written; (7) simulated age and staining of the document itself; (8) extreme wrinkling and fold-

ing of document; (9) document or signature in pencil writing, or a carbon copy; (10) the unknown author of the document.

The experienced examiner who has seen a hundred or more of these documents can, in many cases, make a shrewd guess regarding the authenticity of the document from the familiar story alone, but of course will not base a positive opinion on this evidence.

An astonishing disputed document often is dropped like a bombshell into the quiet settlement of a large estate only a few days before the time limit expires. A consideration of all other matters stops for investigation of the startling new claim. Relatives and beneficiaries may at once be marshalled into two warring camps. The document may have come anonymously to a public officer, and sometimes a suspected document appeals especially to those beneficiaries who otherwise have not been provided for. In some instances highly deserving charitable societies or churches are willed a considerable part of an estate in order to get support for the document by those thus directly benefited.

The claimants in these fraudulent cases are of numerous classes. In many instances they are members of the family, sons, daughters, or nephews or nieces, who by a genuine will are to receive only the income of trusts or who had been provided for only during the life of the beneficiary. Many of the claimants are women who, no doubt, hope to be aided by sympathy, and in some instances there is a veiled suggestion of unknown, illicit relations. In other cases there is a claim of secret marriage and that a claimant is a son or

\*Author of *Questioned Documents* (2d ed., 1929), *The Problem of Proof* (1922), and *The Mind of the Juror* (1937); reprinted from the *Journal of Criminal Law and Criminology*, Jan.-Feb., 1937.

daughter never openly acknowledged. Many claimants are those "who took care of" the decedent, and nurses and doctors make fraudulent claims for special services.

Fantastic stories are often told of unknown acts of kindness, alleged relationship, and vaguely described services that it is alleged justify a large reward. There is no doubt that in some instances a "found" will does what a decedent intended to do but failed to do, and these cases are often successful although actually based on a forged document.

A wild or improvident son of a wealthy decedent, well provided for by a trust, may "find" a surprising will, or an estranged daughter may be the beneficiary in a plausible but tardy will. Fiancees of slow-acting lovers sometimes are successful in probating a will that the bridegroom-to-be never saw. In some of these cases a claimant is aided by the perjury of those who frankly say to each other that the document ought to be genuine whether it is or not. Cir-

cumstances in some of these cases are powerful witnesses.

All unusual wills are not bad, but many of them are, and in many cases they are shown to be palpably defective when properly investigated. It may be impossible to get the suitable paper, or a typewriter may uncover a fraud. These documents, when typewritten, often show they were written by an inexperienced operator, and spelling and punctuation may have identifying value. Ignorant claimants do many kinds of things that cast suspicion upon a document.

One of the most common weaknesses in these "found" wills is that they are not witnessed by the right kind of witnesses. In some cases one or both of the witnesses cannot be found, and again the witnesses themselves are under suspicion as well as the claimant. Another characteristic of these documents is the ignoring of a trusted lawyer who has acted for the decedent in all legal and important business matters for many years.

#### WHEN SPEED WAS REALLY TERRIFYING

NOTHING more clearly underlines the change than an article which appeared in an English newspaper in the year 1829, when George Stephenson's "rocket" engine ran on rails at the unheard-of-speed of 35 miles in 48 minutes, on the line between Liverpool and Manchester. Even if means were found, the paper said, "to abate one-half the violent shock in stopping, enough remained to terrify considerate men from risking their persons in such species of conveyance. Till we have bones of brass or iron . . . it is preposterous to talk of traveling 50 or 60 miles an hour as a practicable thing." It was stated as a notorious fact that the brains of business men were so addled by the swift journey from Manchester to London that oftentimes on arriving at the latter point they forgot what they had come for, and had to write home to find out. One elderly gentleman became, indeed, so impregnated with velocity that he dashed headlong into an iron post and shattered it to fragments.

—DEAN PAUL SHIPMAN ANDREWS,  
In Nov. 1938 Am. Bar. Ass'n Journal.



### THE MISSING JUROR

A CASE which had been on trial several days was about to be ended. The lawyers had finished their arguments, and the judge had completed his charge to the jury. He dismissed the jurors, telling them to retire and arrive at a verdict. The deputy-sheriff who had them in charge locked them in a room. It was then late at night. Immediately a rap came at the door. The persons who were waiting in the court-room were breathless, not expecting that a verdict would be reached so quickly. The officer opened the door, and the foreman spoke a word to him. The officer staggered; then he spoke to the judge:

"There's a juror missing, your Honor."

"A juror missing?" repeated the court in surprise.

"That is what they tell me, your Honor," replied the officer.

"Those jurors were left in your charge, and you are responsible for them. If there is a juror gone, it will be your duty to produce him. What right have you to go to sleep while on duty? Mr. Officer, produce that man or we will have you taken care of."

The officer was in a cold sweat; he was dumfounded. The people in the room burst into a quiet laugh.

The sleepy officer started. There were no lights in the streets of the place, and in order to discover his

man it was necessary for him to carry a lantern. He walked up one street and down the other, holding the lantern in the face of every person he met. Finally, an hour afterward, he returned to the court-room and reported that he could not find the missing juror.

"You must find him," said the court, emphatically.

The officer wilted. He did not know what to do. Tired and weary from his long search and day's work, he was ready to take the consequences of his dereliction of duty.

It was finally suggested by the court to go to the juror's home and see if he was not there. It was ascertained where he was living, and the officer with his lantern started for the place. It was three miles from the court-house.

Two hours later the officer appeared with the missing juror.

"I found him in bed, your Honor, at his boarding-house."

"What do you mean, sir, by your very strange behavior?" asked the court of the offender.

"Nuthin', yer Honor. I just went home."

"But how did you come to go home?"

"You said I might, yer Honor."

"I said you might go home?" asked the judge in astonishment.

"Yes, sir, you told us we might retire, and I went home and done so."

# AS A CROW FLIES

## IN RE SOMACH LICENSE

Court of Common Pleas, Pittsburgh, Pa.

Applicant for Restaurant Liquor License, No. 69 May Sessions, 1938. Q. S. Allegheny County.

J. Alfred Wilner, for petitioner.

Frederic G. Weir, for respondent.

MUSMANNO, J., June 10, 1938.—An application was filed with the Pennsylvania liquor control board on February 7, 1938, by Theodore Somach for a restaurant liquor license for premises at No. 1802 Crafton boulevard, in the city of Pittsburgh, Allegheny county, Pennsylvania. Subsequently on March 30, 1938, the application was refused by the board without a hearing because the establishment was located less than three hundred feet from the Crafton high school and the superintendent of the Crafton schools and the board of school directors had protested the issuance of the license. A hearing was held on April 22, 1938, and on April 30, 1938, the liquor control board again refused the issuance of a license. An appeal was taken to the court of quarter sessions of Allegheny county and a hearing had on May 25, 1938. The testimony at this hearing would tend to establish the following facts:

That by measuring from the door of the Somach establishment to the pavement on the opposite side of the street, thence along the street to a point directly in front of the entrance to the high school building, and then along the walk to the building, is slightly over three hundred feet. By approaching the same entrance to the high school building by a diagonal walk at the corner of the building, the distance is less than three hundred feet.

It is argued by the appellant, *inter alia*, that the distance between his establishment and the school building should be measured, not on a straight line, but along such a route as would

normally be traversed by a pedestrian travelling between the two points. He claims that it should be measured not "as a crow flies," but as a man walks.

We are here called upon to construe that part of section 403 of the Pennsylvania liquor control act, which reads as follows:

" . . . Provided, however, that, in the case of any new license or the transfer of any license to a new location, the board may, in its discretion, grant or refuse such new license or transfer if such place, proposed to be licensed, is within three hundred feet of any church, hospital, charitable institution, school or public playground."

It seems fundamental to us that in measuring distances, there can be only one method employed—and that is straight linear measure. Geographical measurements have no regard for streets, curbs or walking lanes. They are direct, undeviating and absolute. Distances referred to in statutes can only be measured in the same way. Mathematical distance should never, and can never, be a subject for debate. Three hundred feet cannot contract or stretch according to the view of the particular person doing the measuring. It is not a matter of deciding which street or route to follow. Lineal measurements ignore streets, as they must nullify mountains, rivers and any other intervening topography.

As a straight line is the shortest distance between two termini, three hundred feet must inevitably be three hundred feet over the shortest cosmographic route—and that means a straight line.

There is a popular notion that the most direct route is that one which is expressed by the phrase, "as a crow flies." This is a fallacious notion. A crow does not always fly straight. In fact, he rarely does. Indeed, he is a rather unreliable bird. When he

sets out on a journey he seldom proceeds with bullet precision to his destination. He must alight from time to time to sample worms, caterpillars and grasshoppers; he can never soar directly over a cornfield, he must circle over it several times and then swoop down to dine on newly planted corn, not infrequently glutting himself to the extent that his navigational sense of direction is considerably dulled.

The crow is wary and cautious, which are points in his favor, self-preservation being the first law of nature, but his caution is often carried to a foolish extreme. He is, with reason, afraid of the farmer who stands ready with a shotgun to give him a warm welcome for uprooting his cornfield, but in his (the crow's) fright, he cannot tell the difference between a farmer and a scarecrow. Thus he will always fly pell-mell away from the latter, which in its shapeless bundle of rags looks no more like a farmer than an Eskimo harpooning a fish.

To use "as a crow flies" as a simile for bullet directness is incorrect. "As a crow flies" is a phrase that should be eliminated from the lexicon of accurate speech and writing. A crow sent out on a direction and distance-marking expedition would come back with a report whose accuracy could only be conjectured at, after making allowances and deduction for the time and effort expended by him in the pursuit of grasshoppers, in the visits to cornfields, and in the fluttering flights away from scarecrows.

We do not intend by this opinion to proscribe the crow. He is really not a bad bird and can (and does) give plenty of "caws" to show his friendliness. We only say that he is not accurate and cannot be utilized, in the interpretation of a liquor statute, as a surveyor to draw a straight line. If a bird must be used in chart-

ing a direct course to a liquor establishment, it would appear that the swallow would more instinctively find the direct route than a crow. However, we are firmly of the opinion that the nomenclature of birds has no place in legal language, not dealing strictly with an ornithological subject. So far as we are concerned, "as a crow flies" to suggest a straight line is here banned, both in the popular and juristic use. Nor would we suggest for a substitute, "as an airplane flies," or "as a bullet is projected." It is our opinion that in describing a straight line it is quite sufficient simply to say "in a straight line."

Euclid and Einstein are sufficient authorities for what we have here stated.

We thus decide that since the Somach establishment is within three hundred feet, on a straight line, of the Crafton high school, the application for a liquor license must be refused.

### UNIQUE MARRIAGE PAPER

Contributor: Alexander Savanuck.

A BREACH of promise action was instituted prior to the enactment of the New York Statute prohibiting such relief. It concerned an illiterate middle aged woman and a younger man, who took advantage of her limited knowledge to obtain all the advantages of a marital state without the assumption of any of its obligations. When he was faced with an action for his alleged refusal to marry the lady in question, he attempted to pacify her by giving her the following instrument:

To: All Not Concerned: July 12, 1933.

If all is agreeable to both parties of the first part: and further that Mrs. X is a widow of two husbands and wants husband number three (3) and she so name a party known by the name of Y who was a boarder and licensed secured to wed the

## CASE AND COMMENT

first party of the first part, known to us as Mrs. X, now residing at ----- and before.

If this woman herein named can swear by and agree to omitt other men from herself, and would not go the wayward way of the past and further agrees that she omitt from others the trouble she has layed them too, a Mr. Y, a past boarder and admirer will agrees to the above party of the first, excluding friends that she may now be admiring and in the year of 1934 or otherwise agree to in some future agreement or disagreement, the signer of this article will agree to unite in matrimony agreed on between the party of the first part and the signature of this article. So let it be known, if these paragraphs shall be lived up to by both parties the undersigned will agree to same.

Sign here -----  
Witnessed by -----

I should add that the jury realized that the lady was imposed upon and brought in a verdict in her favor.

### THE POETIC DEED

(This very unique instrument, signed, sealed, and acknowledged, by the makers thereof, may be found in Deed Book #45, Raleigh County Clerk's Office, in Beckley, West Virginia.)

JOHN LAVERTY and WIFE  
DEED to  
LONDIE M. GATES, et al.

This Deed made on Christmas day, Nineteen hundred and ten, Anniversary of the Birth Of Him who died for men, Between John and Susan Laverty, Who are husband and wife, Parties of the first part Who are feeble now in life. The parties of the second part We will now recall, They are the names that follow, Which number nine, in all; Londie M., Ben H., and Ott Gates, Kelly Clay and Radie Clay And Emmett Harper next

Witnesseth:

That in consideration, Of the affection and love

We bear the nine grand children Which are named above, We do hereby give and grant The following real estate, With warranty that's general And which is situate, In grand old Raleigh County, And in West Virginia State, In the district of Marsh Fork, Near where Rock Creek's Waters prate, And to be more definate, We'll give you mete and bound So all may know exactly, Just what the lines surround;

Beginning at a stake on east side of the ridge, S. 65' W. 176 feet to a stake on west side of said ridge; S. 25' E. 217 feet to a stake in and at the head of a small drain. N. 65' E. 176 feet to a stake on top of a ridge above the cemetery; N. 25' W. 247 feet to the beginning. Containing one acre.

The above tract is granted, Which we do now attest, To themselves and loved ones For their final place of rest; The same is meant to be conveyed Unto them and their heirs forever So that all may have their six by three

When the cords of life shall sever And witness now our signatures, Our solemn seals of love, And may there be reunion, Unbroken, upabove.

### A SCREWY DEFENSE

Submitted by Wm. A. Bolan.

THE Covington trolley coach operators have been annoyed by an individual who mumbles a fake number and jumps off the trolley coaches without paying any fare.

Sunday afternoon the individual did this at Fourth and Madison Avenues and Covington Patrolman Stanley Watson went after him. The man quarrelled with the policeman who arrested him.

Monday morning in Police Court the man was arraigned on a disorderly conduct charge. Wm. Bolan, Attorney for the car company, assisted in the prosecution and asked the defendant who he thought he was and his reason for not paying fare. The defendant pleaded guilty and his defense was that he was "Screwed."

Judge Joseph E. Goodenough of the Covington Police Court then sentenced the defendant to walk for thirty days and restrained him from riding the street cars or trolley coaches during that period and after the thirty days when he did ride he must pay five cent fare.

#### A UNIQUE LEGAL MATTER

Contributor: Nathaniel A. Rankow, New York City.

The following letter sent by the contributor's office to an insurance company covering a claim presenting a rather unique and novel matter.

MY client, Mr. A, on or about the 27th day of April 1918, purchased a family cemetery plot suitable for six, at the Holy Name Cemetery. Through the course of the years, he permitted members of his immediate family to be buried in this plot.

Mr. A's sister, who was married to Mr. B, died: upon her death she was buried in Mr. A's cemetery plot. Subsequently, Mr. B, Mr. A's brother-in-law remarried, and on or about January 9th, 1933, the aforesaid Mr. B died. He was buried by his wife, who is the administratrix of his estate, next to his first wife in the funeral plot owned by Mr. A at the Holy Name Cemetery.

The unfortunate part of this act is that this particular cemetery plot was suitable for only six persons, and in the course of the years, each and every plot had been filled, with the exception of one which was awaiting the retirement from this life, of my unfor-

tunate client Mr. A, who, at this time, finds that a stranger sleeps next to the remains of his beloved wife and children, and leaves no vacancy for his remains upon his earthly demise.

At the time of the death of my client's brother-in-law, Mr. B, my client was out of town, he at that time was visiting relatives in Asbury Park. He received a letter advising him of his brother-in-law's death, and he went to Jersey City to call upon Mr. B's wife, and at that time was, for the first time, apprised of the fact that said Mr. B had been buried in his cemetery plot in the only vacant ground, which in actuality should have been awaiting his surcease.

It is said by the poets, "He is a happy man who so lives, that death at all times, may find him at leisure." It is readily seen, therefore, that my client has not the leisure to die. Unfortunately, he also lacks sufficient monies to purchase a plot for himself; it is, therefore, essential that he procure from the estate the monies.

#### HAMILTON COUNTY, OHIO COURT OF COMMON PLEAS

Augusta,—Plaintiff vs. The Savings & Loan Association, a Corporation under the laws of Ohio, Defendant.

A-33507. Motion to strike out Defendant's demurs as a sham.

DEFENDANT could give no cause why he demurs to the petition, to the plaintiff. Therefore the defendant's demurs is a sham.

Plaintiff ask that the defendant's demurs be strike from the file. Defendant could not proof that I have not sufficient facts stated.

Plaintiff admit that judge should of took judgment against the defendant for not answer what the facts are to the plaintiff.

Plaintiff admit that she do not know the terms of courts.

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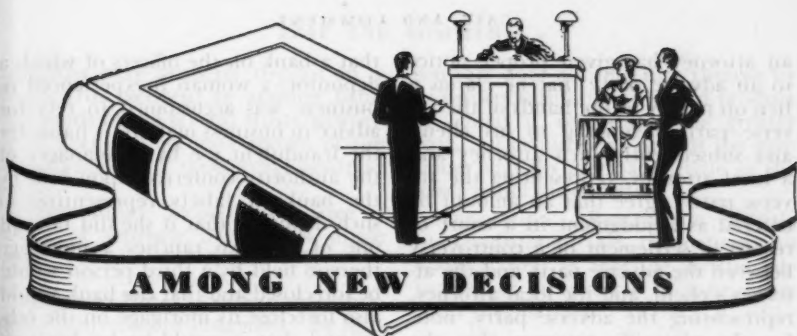


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**Appeal** — *by administrator.* In *Re Maher*, — Wash. —, 79 P. (2d) 984, 117 A.L.R. 91, it was held that while an administrator may appeal from a decree of distribution which fails to make adequate provision for the payment of the known debts due from the decedent's estate, he cannot appeal from a decree determining the persons who should receive the estate either as heirs at law of the decedent or as distributees under a will.

Annotation: Right of executor or administrator to appeal from order of distribution. 117 A.L.R. 99.

**Appeal** — *waiver of right to appeal from conviction.* In *Brooks v. State*, — Ariz. —, 78 P. (2d) 498, 117 A.L.R. 925, it was held that one convicted of crime who accepts his freedom under a suspension of sentence during good behaviour, thereby forgoes his right of appeal from a judgment that may be pronounced in the future on that conviction, on the ground of errors committed at the trial, but may seek review on the ground of any error in the judgment and sentence as subsequently pronounced.

Annotation: Acceptance of probation, parole, or suspension of sentence as waiver of error or right to appeal or to move for new trial. 117 A.L.R. 929.

**Arbitration** — *waiver of right to arbitrate.* In *Radiator Specialty Co. v. Cannon Mills*, 97 F. (2d) 318, 117

A.L.R. 299, it was held that a contractual right to arbitrate and the statutory right to a stay of an action at law pending arbitration may be waived.

Annotation: Waiver of arbitration provision in contract. 117 A.L.R. 301.

**Attorneys** — *duty to advise client as to amount of charge for work involved.* In *Higgins v. J. B. Farnum Co.* — R. I. —, 200 A. 538, 117 A.L.R. 1003, it was held that if a client, with full knowledge of the facts, instructs an attorney to do an amount of work disproportionate to the sum involved, he cannot complain if the attorney's bill seems disproportionately large; but it is the duty of the attorney, if he intends to base his bill entirely on the reasonable value of his services, to make clear to his client that the amount of work he is being called upon to perform will cause his fee to be out of proportion to the money involved, so that the client may have an opportunity to determine whether or not he desires to proceed with the matter.

Annotation: Duty of attorney to advise client regarding the work involved and the amount of his compensation. 117 A.L.R. 1008.

**Attorneys** — *lien for compensation on money paid into court.* In *Myers v. Miller*, — Neb. —, 279 N. W. 778, 117 A.L.R. 977, it was held that where

an attorney has given proper notice to an adverse party that he claims a lien on money in the hands of the adverse party belonging to his client, and subsequently such attorney and a local attorney, representing the adverse party, agree that an amount be entered as a judgment in a court of record in settlement of a controversy between the adverse party and the attorney's client, and the local attorney, representing the adverse party, notifies the plaintiff's attorney that the amount of such judgment has been paid into a court of record, and the attorney so notified then seeks to obtain the amount of his attorney's lien from the proceeds of the judgment from the judge of such court of record, held, such attorney, under such facts and circumstances, has no cause of action against the defendant to enforce his attorney's lien.

Annotation: Payment into court or to clerk of court as affecting rights, liability, and procedure in respect of lien of judgment creditor's attorney. 117 A.L.R. 383.

**Automobile Insurance** — "*accident.*" In *Rothman v. Metropolitan Cas. Ins. Co.* 134 Ohio St. 241, 16 N. E. (2d) 417, 117 A.L.R. 1169, it was held that the state of the will of the person by whose agency an injury is caused, rather than that of the injured person, determines whether an injury is accidental within the provisions of a policy indemnifying the insured against loss resulting from claims for accidental injuries caused by the operation of insured's automobile.

Annotation: What amounts to accident within policy of automobile liability or indemnity insurance. 117 A.L.R. 1175.

**Banks** — *liability for fraud of officer toward patron.* In *Rutherford v. Rideout Bank*, — Cal. (2d) —, 80 P. (2d) 978, 117 A.L.R. 383, it was held

that a bank on the officers of which a depositor, a woman inexperienced in business, was accustomed to rely for advice in business matters, is liable for the fraudulent use by its manager of the authority conferred upon him by the bank in falsely representing to such depositor that if she did not sell one of her two ranches a mortgage thereon held by a third person would be foreclosed and that the bank would also foreclose its mortgage on the other, and that it would be for her best interest to accept a certain offer therefor, in consequence of which she sold the ranch for less than its value, learning afterwards that the purchaser had paid the manager for his assistance in bringing about the sale.

Annotation: Responsibility of bank for fraud of officer or agent inducing customer or debtor of bank to enter into transaction with such officer or agent personally or with third person. 117 A.L.R. 389.

**Bank Stock** — *trustee's liability for.* In *Hospelhorn v. Emerson*, — Md. —, 200 A. 378, 117 A.L.R. 650, it was held that a statute providing that a person having stock entered on the books of a corporation in his name as trustee shall not be personally subject to any liability on such stock, but that the estate and funds in the hands of the trustee shall be subject to the liability imposed upon holders of such stock, operates to exempt the trustee from personal liability on bank stock held in trust, although he has in his hands, as trustee, no property other than such stock.

Annotation: Liability on stock held by one as trustee or in other fiduciary capacity. 117 A.L.R. 655.

**Banks** — *trust funds in separate accounts.* In *Finley v. Exchange Trust Co.* — Okla. —, 80 P. (2d) 296, 117 A.L.R. 162, it was held that where a trust company holds the funds of numerous beneficiaries, such trust

company may properly deposit in a single trust account in another bank the funds of the several trusts, provided it keeps an accurate record of the contributions of the several separate trusts.

Annotation: Deposit by trustee of funds of separate trusts in a single bank account. 117 A.L.R. 179.

**Bills and Notes** — *provision authorizing confession of judgment.* In *Iglehart v. Farmers Nat. Bk. of Annapolis*, — Md. —, 197 A. 133, 200 A. 833, 117 A.L.R. 667, it was held that whenever a warrant of attorney to confess judgment embodied in a promissory note is of such a character as to permit judgment to be entered at any time prior to the maturity of the instrument, its negotiability is destroyed.

Annotation: Negotiability of bill or note as affected by provision authorizing confession of judgment. 117 A.L.R. 673.

**Carriers** — *ice on platform.* In *Ponton v. United Elec. Railways Co.* — R. I. —, 200 A. 425, 117 A.L.R. 518, it was held that a street railway company is as a matter of law not chargeable with negligence toward a passenger who fell while alighting from a car because of the formation of ice on the outside edge of the car vestibule, exposed to the weather when the doors were closed, or on the outside step of the car, on a day of rain which froze as it fell, forming a coating of ice.

Annotation: Liability of carrier for injury to passenger as result of ice, snow, or rain on exposed or interior portions of car or vessel. 117 A.L.R. 522.

**Conditional Sales** — *seller's rights against seller's mortgage.* In *Bancroft Steel Co. v. Kuniholm Mfg. Co.* — Mass. —, 16 N. E. (2d) 78, 117 A.L.R. 678, it was held that the seller of material under a conditional sale

contract does not lose title thereto by its incorporation in a finished product of which it constitutes the greater part, but acquires, as against the purchaser and his mortgagee, title to the lesser materials added.

Annotation: Reservation of title by conditional sale of material to manufacturer as affecting articles fabricated or in process of fabrication from the material. 117 A.L.R. 682.

**Conflict of Laws** — *validity of marriage.* In *Osoinach v. Watkins*, 235 Ala. 564, 180 So. 577, 117 A.L.R. 179, it was held that the rule that a marriage valid where celebrated is valid everywhere is subject to exception where marriage is contrary to the law of nature as generally recognized in Christian countries, or where the marriage is one which the lawmaking power has declared void, either by express terms or by necessary implication, as in the case of prohibited marriages between persons in certain degrees of relationship.

Annotation: Recognition of foreign marriage as affected by policy in respect of incestuous marriages. 117 A.L.R. 186.

**Constitutional Law** — *regulation of hours.* In *Holgate Brothers Co. v. Bashore*, — Pa. —, 200 A. 672, 117 A.L.R. 639, it was held that a state statute forbidding the employment of any person for more than a stated number of hours in any one week, or for more than a stated number of hours in any one day, or on more than five and one-half days in any period of seven consecutive days, improperly delegates legislative power in providing that if the strict application of the schedule of hours provided shall impose an unnecessary hardship and violate the intent and purpose of the act, the Department of Labor and Industry, with the approval of the Industrial Board, may make, alter,

amend, and repeal general rules and regulations prescribing variations.

Annotation: Judicial questions regarding Federal Hours and Wages Act and state acts in conformity therewith. 117 A.L.R. 649.

**Constitutional Law — zoning ordinance.** In *Arverne Bay Construction Co. v. Thatcher*, 278 N. Y. 222, 15 N. E. (2d) 587, 117 A.L.R. 1110, it was held that the police power of the state should not be defined so narrowly as to exclude reasonable restrictions placed upon the use of property in order to aid the development of new districts in accordance with plans calculated to advance the public welfare of a city in the future, but such restrictions must be kept within the limits of necessity.

Annotation: Zoning: creation by statute or ordinance of restricted residence districts from which business buildings or multiple residences are excluded. 117 A.L.R. 1117.

**Corporate Stock — valuation for succession tax.** In *Re Patton*, — Wis. —, 278 N. W. 866, 117 A.L.R. 140, it was held that where the valuation, for inheritance tax purposes, of stock owned by a decedent in a close personal holding corporation of which he was the principal officer and guiding head, is based upon the liquidation value of its assets without including anything for going value, the full amount of insurance on decedent's life held by the corporation should be included in fixing the value of the shares, without any deduction for the loss sustained by the corporation through being deprived of his services.

Annotation: Valuation of property for purposes of succession or estate tax. 117 A.L.R. 143.

**Corporations — acquisition of stock on shareholder's death.** In *Krauss v. Kuechler*, — Mass. —, 15 N. E. (2d) 207, 117 A.L.R. 1355, it was held that

a bylaw adopted by the four stockholders of a corporation which provides that at the death of any stockholder the corporation may acquire his shares at a price to be fixed by the surviving stockholders is, even though not effective as a bylaw because not filed in the office of the Secretary of State as required by statute in the case of an amendment to an agreement of association, operative as a mutual agreement.

Annotation: Provision of articles, bylaws, or agreement regarding future determination by parties other than owner of price at which corporate stock is to be taken over by corporation or stockholders upon specified event. 117 A.L.R. 1359.

**Corporations — pledge to secure debt of officer.** In *MacQueen v. Dollar Savings Bank*, 133 Ohio St. 579, 15 N. E. (2d) 529, 117 A.L.R. 1258, it was held that the voluntary transfer of property by a corporation to secure the individual indebtedness of one of its officers is binding upon the corporation if all its stockholders assent thereto; but such transfer is subject to the rights of creditors prejudiced thereby.

Annotation: Right of creditors or their representatives to complain of a voluntary transfer or pledge of corporate assets by a corporation which subsequently becomes insolvent. 117 A.L.R. 1263.

**Corporations — power to change obligations to stockholders.** In *Johnson v. Bradley Knitting Co.* — Wis. —, 280 N. W. 688, 117 A.L.R. 1276, it was held that the authority conferred upon a corporation by a statute in existence at the time stock therein was issued, to amend, by a vote of two thirds of the stock outstanding and entitled to vote, its articles of incorporation so as to "provide anything which might have been originally provided in such articles," renders

valid and binding, as against a holder of common and preferred stock, amendments reducing the dividend rate on preferred stock from 7 per cent to 5 per cent, reducing the percentage of profits to be set aside as a preferred stock sinking fund from 3 per cent to 2 per cent, reducing the quick assets requirement from 120 per cent to 60 per cent of the preferred stock outstanding, providing for the substitution for unpaid cumulative dividends on preferred stock, warrants for \$20 for every \$35 of such unpaid dividends, and increasing the nonpreferred common stock from 20,000 to 50,000 shares without giving holders of existing common stock the right to take new stock in amount sufficient to retain their relative rights incident to stock ownership.

Annotation: Power of corporation to change obligations to stockholders. 117 A.L.R. 1290.

**Deeds** — *grant of one acre out of larger tract*. In *Turner v. Hunt*, — Tex. —, 116 S. W. (2d) 688, 117 A.L.R. 1066, it was held that under a deed conveying one acre of land to be surveyed at any suitable place along the south boundary line of the grantor's land, the grantee acquires, not a present title, but only an equitable right.

Annotation: Validity and effect of deed which purports to convey specified acreage or quantity of land out of a larger tract, with or without a right of selection expressed. 117 A.L.R. 1071.

**Elevators** — *starting of elevator by child visitor*. In *Symonds v. Free Street Corp.* — Me. —, 200 A. 801, 117 A.L.R. 986, it was held that the owner of an office building is liable to a person injured by the sudden starting of an elevator while such person was alighting from it, when the control lever was moved by a twelve-year-old boy visitor to the building whom

the elevator operator had shown how to operate it, only if the operator foresaw or ought to have foreseen that the boy might do what he did and by the exercise of reasonable care might have prevented it.

Annotation: Duty to guard against operation of elevator by unauthorized person. 117 A.L.R. 989.

**Executors** — *purchase of property of decedent*. In *Dudley v. Dudley*, — Mass. —, 15 N. E. (2d) 212, 117 A.L.R. 1365, it was held that the administrator of a decedent's estate having no funds available for the payment of a mortgage on decedent's realty may, with a view to the payment of debts and expenses of administration, for which decedent's personality was insufficient, obtain control of a mortgage by using his own funds, foreclose it, take title to the property, and resell it without obtaining license from the court to do so, provided he accounts to the estate for any profits made in the transaction.

Annotation: Right of executor or administrator personally to purchase mortgage or other lien on real property of decedent, and enforce same. 117 A.L.R. 1371.

**Gaming** — *exception in statute penalizing bookmaking*. In *Ex parte Walker*, — Cal. (2d) —, 80 P. (2d) 990, 117 A.L.R. 825, it was held that one who for a commission receives from others bets on horse races which, through an agent at the race track, are placed through a pari-mutuel machine located inside of the race track inclosure, is not within the exception to a statute penalizing bookmaking created by a statute permitting the making of wagers through a pari-mutuel machine within the racing inclosure, and providing that a wager made inside an inclosure for a principal who is not within the inclosure shall be considered as having been

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made within the inclosure, and that any activity of the principal in connection with such wager shall not be considered a wager made outside the inclosure.

Annotation: Construction and application of statutes permitting specified forms of betting. 117 A.L.R. 828.

**Husband and Wife** — *estate by entireties in personal property*. In *Madden v. Gosztonyi Savings & Tr. Co.* — Pa. —, 200 A. 624, 117 A.L.R. 904, it was held that in Pennsylvania, personal property may be held by a husband and wife as tenants by the entireties.

Annotation: Estate by entireties in personal property. 117 A.L.R. 915.

**Husband and Wife** — *recovery from husband for expenditures by wife*. In *Manufacturers Trust Co. v. Gray*, 278 N. Y. 380, 16 N. E. (2d) 373, 117 A.L.R. 1176, it was held that a jury is warranted in finding that a husband did not impliedly agree to reimburse his wife, from whom he had separated, for expenditures made by her for support out of her own means, where it does not appear that the wife objected to the separation or desired her husband to continue to support her.

Annotation: Liability of husband, in absence of decree of divorce or separation, to reimburse wife or her estate for money expended by her for her support after separation. 117 A.L.R. 1181.

**Husband and Wife** — *repudiation*. In *Juhasz v. Juhasz*, 134 Ohio St. 257, 16 N. E. (2d) 328, 117 A.L.R. 993, it was held that under § 10,512-3, General Code, an antenuptial agreement is deemed valid unless an action to set it aside is brought within six months after the appointment of the executor or administrator or unless the validity of the agreement is otherwise attacked within that period,

and neither the filing of a written election to take under the law, in which is incorporated a statement that the widow repudiates "the prenuptial agreement, which was procured by fraud," nor the filing of exceptions to the inventory and appraisal on the ground that the appraisers failed to allow the statutory setoff and a year's support to the widow, constitutes an attack within the purview of the statute.

Annotation: What amounts to widow's election as between antenuptial or postnuptial settlement and husband's will or her rights under statute of descent and distribution, or attack by her upon such settlement. 117 A.L.R. 1001.

**Insurance** — *against accident*. In *Burns v. Employers' Liability Assur. Corp.* 134 Ohio St. 222, 16 N. E. (2d) 316, 117 A.L.R. 733, it was held that death due to amebic dysentery, contracted from drinking water which had been infected by the breaking of a sewer pipe in a hotel, is not an included coverage within the terms of an accident policy insuring against bodily injuries sustained, solely and independently of all other causes, through accidental means.

Annotation: What constitutes bodily injury within policy of accident insurance or accident feature of life policy. 117 A.L.R. 739.

**Justice of the Peace** — *effect of fault of on appeal*. In *Holmes v. District Court*, — Nev. —, 80 P. (2d) 907, 117 A.L.R. 1382, it was held that one who has taken all steps necessary to perfect and make effective his appeal from a judgment rendered by a justice of the peace should not be chargeable with any fault or omission on the part of the justice in respect of something which the statute requires such justice to do.

Annotation: Fault or omission of justice of peace regarding bond, un-

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dertaking, or recognizance, as affecting party seeking appeal. 117 A.L.R. 1386.

**Labor Organizations** — *liability of union to member for loss of latter's employment.* In *O'Keefe v. United Assn. of Plumbers and Gas-Fitters*, 277 N. Y. 300, 14 N. E. (2d) 77, 117 A.L.R. 817, it was held that a labor union one of the objects of which is to protect its members against unjust and injurious competition and to secure unity of action for their mutual protection and support, which, for the purpose of protecting both its own interests and those of employers who adhere to a collective bargaining agreement with it, fixing a wage scale, is seeking to replace with other members, for the period of a year, members working for an employer who is found to have been paying one of his employees less than the wages fixed by the working agreement, may not be enjoined from so doing by the members thus displaced, on the ground that its action is arbitrary, unreasonable, and without authority under its constitution and bylaws.

Annotation: Right of member to recover against or enjoin union where, without fault on his part, he has been damaged by its act, not specifically directed against him. 117 A.L.R. 823.

**Liquor Dealers** — *taxation of.* In *Bardon et al. v. Nudelman*, 369 Ill. 214, 15 N. E. (2d) 836, 117 A.L.R. 683, it was held that the fact that retail liquor dealers are required by a subsequently enacted state Liquor Control Act to pay an annual license fee of a fixed amount does not operate to render inapplicable to such dealers a statute imposing an occupation tax for revenue upon retailers.

Annotation: Intoxicating liquor business as subject to a tax imposed generally on occupations or business. 117 A.L.R. 686.

**Mortgage** — *profit made on resale of property bid in by mortgagee on foreclosure.* In *Pennsylvania Ave. Fed. Sav. & Loan Assn. v. Fedder*, — Md. —, 199 A. 785, 117 A.L.R. 858, it was held that a mortgagee who, after bidding in the mortgaged property on foreclosure for less than the amount of the mortgage debt, resells it for an amount exceeding the amount for which he bid in the property, cannot be held accountable to a guarantor against a deficiency on foreclosure for the amount made good by him under the guaranty.

Annotation: Accountability of mortgagee or pledgee for profit made upon resale of the property after purchase thereof at foreclosure or other enforcement sale. 117 A.L.R. 863.

**Municipal Corporations** — *power of legislature to change boundaries.* In *Geweke et al. v. Niles*, 368 Ill. 463, 14 N. E. (2d) 482, 117 A.L.R. 262, it was held that in Illinois the legislature has authority not only to determine the territory and boundaries of various municipal corporations but also to change or alter them by annexing or disconnecting territory, either with or without the consent of the corporate authorities.

Annotation: Power to detach land from municipal corporations, towns, or villages. 117 A.L.R. 267.

**National Labor Relations Act** — *effect on state legislation.* In *Wisconsin Labor Relations Bd. v. Fred Rueping Leather Co.* — Wis. —, 279 N. W. 673, 117 A.L.R. 398, it was held that the National Labor Relations Act does not so clearly manifest an intention to exclude state regulations as to supersede, in so far as labor practices affecting interstate commerce are concerned, state legislation covering the same ground.

Annotation: State labor legislation as affected by National Labor Relations Act. 117 A.L.R. 414.

**Negligence** — in manufacture of refrigerating machinery. In *Tayer v. York Ice Machinery Corp.* — Mo. —, 119 S. W. (2d) 240, 117 A.L.R. 1414, it was held that actionable negligence on the part of a manufacturer of refrigerating machinery, in the manufacture, or in the due inspection and test for defects, of the manifold of an ammonia compressor expected to withstand rapid changes in temperature and high pressures, cannot be inferred where the compressor had failed to disclose leaks when tested at its normal working pressure of 150 pounds to the square inch and had at the time the manifold cracked been continuously operated by the purchaser for approximately eight months, during which time it was subject to the flow of and pressure from ammonia, to rapid changes in temperature, and to "knocks" occasioned by the passing of liquid ammonia through the compressor.

Annotation: Liability for injury or death from refrigerating machinery or apparatus. 117 A.L.R. 1425.

**Pension Funds** — court's power to review rulings under. In *Godlove v. Topeka*, 148 Kan. 337, 81 P. (2d) 39, 117 A.L.R. 1402, it was held that a city employee applied for payments under the provisions of Gen. Stat. 1935, § 13-1481, his application was denied and he brought an action for money under the act. Held, that in the absence of an allegation in his petition that the action of the governing body of the city was arbitrary and capricious it did not state a cause of action, and the action of the governing body was final and may not be reviewed by the courts.

Annotation: Judicial review of decision, on merits, of claim upon public pension fund. 117 A.L.R. 1408.

**Release** — avoidance. In *Serr v. Biwabik Concrete Aggregate Co.* — Minn. —, 278 N. W. 355, 117 A.L.R.

1009, it was held that absent express provisions to the contrary, a written agreement of settlement for known injuries does not bar a later action for existing but unknown injuries; there being mutuality of mistake as to the latter. But where the release expressly so provides, subsequently discovered unknown injuries will not support a suit for its avoidance. Unknown and unexpected consequences of a known injury will not bring a case within the rule permitting avoidance of a release on the ground of mutual mistake.

Annotation: Avoidance of release of claims for personal injuries on ground of mistake or fraud relative to the extent or nature of the injuries. 117 A.L.R. 1022.

**Res Judicata** — determination of amount of inheritance tax. In *Re Cox*, 284 Mich. 628, 279 N. W. 913, 117 A.L.R. 1224, it was held that a probate court's determination of the amount of inheritance tax payable with respect to a certain legacy is not res judicata as to the amount to which the legatee is entitled under the terms of the will.

Annotation: Adjudication in fixing inheritance, succession, or estate tax, as conclusive for other purposes. 117 A.L.R. 1227.

**Sales** — waiver of implied warranties. In *Tharp v. Allis-Chalmers Mfg. Co.* 42 N. M. 443, 81 P. (2d) 703, 117 A.L.R. 1344, it was held that a provision in a contract of sale whereby the buyer waives all implied warranties is not void as against public policy.

Annotation: Validity of provision of contract of sale of personal property negating implied warranties. 117 A.L.R. 1350.

**Sales** — warranty on sale of seeds. In *Pauls Valley Milling Co. v. Gabbert*, 182 Okla. 500, 78 P. (2d) 685, 117 A.L.R. 466, it was held that a

warranty in the sale of personalty, such as seeds, may cover the kind of seeds to be delivered, as distinguished from quality, fitness, etc.

Annotation: Warranties and conditions upon sale of seed, nursery stock, etc. 117 A.L.R. 470.

**Setoff** — *as against assignee for creditors.* In *Belcher v. Bays*, — W. Va. —, 197 S. E. 732, 117 A.L.R. 897, it was held that the indorser of a promissory note, upon the insolvency of the maker, has a definite liability which may be set off against indebtedness due the maker from the indorser in an action by the maker's trustee in an assignment for the benefit of creditors made after insolvency.

Annotation: Right of indorser of commercial paper to set off amount which he is obliged to pay thereon against independent indebtedness to insolvent maker or other person antecedently liable, where debt is assigned after making but prior to maturity of paper. 117 A.L.R. 900.

**Succession Taxes** — *by whom borne.* In *Wachovia Bank & Trust Co. v. Lambeth*, — N. C. —, 197 S. E. 179, 117 A.L.R. 117, it was held that inheritance taxes presently due should be paid out of the corpus without any adjustment as between the life beneficiaries and those ultimately entitled to the corpus of a testamentary trust, embracing substantially all of testator's estate, to pay stated monthly amounts to testator's widow and children, including a grandson adopted as a child, and to divide the rest of the net income among them annually in specified proportions, and, after the death of each (save in the case of the widow, whose share of the income was to be divided among the other first takers), to pay the share of the one so deceased to his or her bodily heirs for life, after which the share of each was to be distributed as a part of testator's estate, according to law.

Annotation: Burden, as between corpus and income, of inheritance, estate, or succession tax. 117 A.L.R. 121.

**Succession Taxes** — *who must bear.* In *Amoskeag Trust Co. v. Trustees of Dartmouth College*, — N. H. —, 200 A. 786, 117 A.L.R. 1186, it was held that in the absence of any testamentary direction as to how the burden of a Federal estate tax is to be borne, it should, in view of its nature as a death duty rather than a succession tax and the fact that it is payable by the executor out of the assets of the estate before distribution, be paid entirely out of residue and not apportioned pro rata among all the beneficiaries.

Annotation: Liability as between residuary estate and legacies or devises for Federal estate tax. 117 A.L.R. 1191.

**Taxes** — *capital employed within state.* In *Alabama v. Pullman-Standard Car Mfg. Co.* 235 Ala. 493, 179 So. 541, 117 A.L.R. 498, it was held that the amount invested in a plant built by a domestic affiliate whose stock is owned by a holding company, with money borrowed from such holding company, and rented to a foreign corporation, as the operating company, whose stock is likewise owned by the same holding company, is not by reason of the relationship of the lessor and the lessee companies to be regarded as capital employed within the state by the operating company, in assessing a franchise tax based upon capital so employed, even though the building company, by reason of a small capitalization, pays a correspondingly small franchise tax.

Annotation: Franchise tax of corporation as affected by creation of affiliated corporation. 117 A.L.R. 508.

**Taxes** — *failure to report sale within time required.* In *Free v. Greene*, — Md. —, 199 A. 857, 117 A.L.R. 717,

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Thirty-six

it was held that a statutory require-  
ment that a sale of realty for taxes be  
reported to the court within thirty  
days from date of sale, found in a sta-  
tute which provides that if, on such  
report, the court shall find the pro-  
ceedings regular, it shall pass an order  
nisi which shall be published, and  
that if no sufficient cause be shown to  
the contrary the sale shall be finally  
ratified by the court, whereupon the  
county treasurer shall convey the  
property to the purchaser, subject on-  
ly to the owner's right of redemption,  
which must be exercised within a year  
and a day from the date of sale, is,  
though directory rather than manda-  
tory, not met by making a report  
nearly sixteen months after the sale,  
since the effect of the delay is to de-  
prive the landowner of an opportu-  
nity to elect whether to redeem or to  
contest the sale.

Annotation: Effect of failure to  
make report, return, or record of tax  
sale within time prescribed by sta-  
tute. 117 A.L.R. 726.

**Trusts — investments.** In *Re Es-  
tate of Heyl*, — Pa. —, 200 A. 617, 117  
A.L.R. 867, it was held that where the  
market value of the mortgaged prop-  
erty at the time a mortgage is taken  
is sufficient amply to secure the loan,  
an investment of trust funds therein  
is not improper, although the mort-  
gaged property does not produce suf-  
ficient income to pay taxes and the  
interest on the mortgage, or although  
it produces no income at all.

Annotation: Surchargeability of  
trustee, executor, administrator, or  
guardian, in respect of mortgage in-  
vestment, as affected by matters relat-  
ing to value of property. 117 A.L.R.  
871.

**Trusts — payment of trustee's com-  
pensation from income or corpus.** In  
*Bridgeport-City Trust Co. v. First  
National Bank & Trust Co.* 124 Conn.  
472, 200 A. 809, 117 A.L.R. 1148, it

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was held that the discretion of the court with respect to the compensation of trustees may also extend to a determination as to whether the compensation shall be charged against income or principal or apportioned between them.

Annotation: Trustee's compensation as payable from income or corpus. 117 A.L.R. 1154.

**Trusts — discretion to use corpus.** In *Booth v. Krug*, 368 Ill. 487, 14 N. E. (2d) 645, 117 A.L.R. 1193, it was held that no such uncertainty as to the subject matter of a trust to apply the corpus after the death of the life beneficiaries to a charitable purpose as will render it void is created by a provision empowering the trustees to use the corpus to meet the needs of the life beneficiaries should the income prove insufficient for the purpose.

Annotation: Validity of charitable gift or trust in remainder as affected by discretion of life tenant, or of trustee acting in life tenant's behalf, to invade or dispose of corpus. 117 A.L.R. 1200.

**Wills — ademption of legacy of bank stock.** In *Gorham v. Chadwick*, — Me. —, 200 A. 500, 117 A.L.R. 805, it was held that a specific legacy of "my stock in" a certain bank is not adeemed by a surrender of the stock held by the testator at the time of making the will, upon a reorganization of the bank and the payment of a stock assessment, in exchange for stock in the reorganized bank.

Annotation: What amounts to

ademption of legacy of corporate stock or other corporate securities. 117 A.L.R. 811.

**Wills — agreement to suppress will.** In *Tator v. Valden*, 124 Conn. 96, 198 A. 169, 117 A.L.R. 1243, it was held that an agreement between the widow and the legatees and blood relatives of a decedent that if a will which revoked an earlier will leaving the testator's estate to his widow should be suppressed and destroyed, she would upon her death leave it to them, is unenforceable by such relatives as being contrary to the public policy evinced by a statute making it the duty, under penalty, of anyone having the possession of a will, upon learning of the testator's death, to deliver it within thirty days to the executor or to the judge or clerk of a probate court, and of every executor knowing of his appointment to exhibit the will to the court for probate within thirty days after the testator's death.

Annotation: Suppression of will, or agreement for its suppression, as contrary to public policy or to statute in that regard. 117 A.L.R. 1249.

**Wills — "issue" as meaning descendants of every degree.** In *Dolbeare v. Dolbeare*, 124 Conn. 286, 199 A. 555, 117 A.L.R. 687, it was held that the word "issue," when used as a word of purchase and unaffected by any circumstance showing a different intent, means descendants of every degree.

Annotation: Meaning of term "issue" when used as a word of purchase. 117 A.L.R. 691.

**IN** *Ciotti vs. Jarecki Manufacturing Co.*, 128 Pa. Super. Ct. 233, involving compensation for the loss of a thumb on the claimant's hand, after a lengthy dissertation concerning the phalanges the court says:

"The Act furnishes a rule of thumb with the rationality of which the court is not concerned."

Contributor: MORTON J. SIMON,  
Philadelphia, Pa.

Thirty-seven



**The Easy Way to Retire at 65.** Social Security may make retirement at 65 very simple, but here's the simplest way of all.

An old city clerk who never made more than \$25.00 a week in his life, one day announced that he would retire from active work because now at the age of 65 he had \$20,000.00 put safely away in the bank.

Some of his lawyer friends around the city hall gave him a little dinner. In thanking them for their kindness he said, "You all know how it is I'm able to retire. I owe a great part to my own abstemious and thrifty habits. Even more I owe it to the good management of my wife. But still more I owe it to the fact that a month ago an aunt of mine died and left me \$19,500."

**Exempting a Band Wagon.** The following act was passed by the Kansas legislature, and is to be found in Sessions' Acts, 1903, p. 113:

**Regulating the use of automobiles.**

An act in relation to automobiles and motor vehicles, regulating their speed and operations on the public highways in this State, providing for their proper equipment, and providing penalties for the violation thereof.

Be it enacted by the Legislature of the State of Kansas; Section 1. That the term "automobile" and "motor vehicle" as used in this Act shall be construed to include all types and grades of motor vehicles propelled by electricity, steam, gasoline, or other source of energy, commonly known as automobiles, motor vehicles, or horseless carriages, using the public highways, and not running on rails or tracks. Nothing in this section shall be construed as in any way preventing, obstructing, impeding, embarrassing, or in any other manner or form infringing upon the prerogative of any political chauffeur to run an automobilious band wagon at any rate he sees fit, compatible with the safety of the

occupants thereof; provided, however, that no less than ten nor more than twenty ropes be allowed at all times to trail behind this vehicle when in motion, in order to permit those who have been so fortunate as to escape with their political lives an opportunity to be dragged to death; and provided, further, that whenever a mangled and bleeding political corpse implores for mercy the driver of the vehicle shall, in accordance with the provisions of this bill, "throw out the life-line."

**Double Jeopardy.** A man had been arrested for drunkenness, and as he passed along with others of his kind the judge simply pronounced a fine of \$3. The man had no money, and with the consent of the city marshal he started out to find the amount. Three hours later the man was found by an officer. He had found the amount necessary to square himself with the court, but his appearance showed conclusively that it had not been used for that purpose. He was rounded up by the officer, and when the judge beheld him it required only a glance to decide the case.

"Thirty days," were the words that the judge pronounced. For a moment the man was a little dazed; then it was his turn:

"Judge," said he, "this ain't right. There's something in the Constitution about a man's not being put in jeopardy of life or limb twice for the same crime. I have already been fined for this crime. This is the same drunk I was up for this morning. I haven't got over it yet."

This latter statement was evident, and the court considered the point well taken.

—Exchange.

**When You Were Bill and I Was Joe.** "Why Gentlemen of the Jury, this man is not, he cannot be guilty," said the lawyer defending a man charged with grand larceny. "He never did a wrong act in his life.



## IT'S NOT YOUR HAND

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*F*OOL-proof hands and fool-proof cases are among the rarest experiences. The bridge expert plans each move ahead sensing the probabilities of his opponent's holdings. A sound game can be played no other way.

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He and I were boys, reared together. I know him as well as he knows himself. He simply couldn't do anything wrong. He and I used to run around together; we used to steal watermelons together; that's his calibre, stealing watermelons; he'd never get up to stealing automobiles."

And the man was acquitted.

Contributed.

**Editorial Whee!** Whenever old attorney Brown of Georgia was defending his client before the court he always spoke in the third person "we," which had the immediate effect of associating himself very closely with his client's cause.

As a rule this had a fine effect on the judge and the jury, but one day Mr. Brown made a slip. He was addressing the jury in a damage suit, and his remarks went something like this. "We got on a Dauphin Street car down town, and when we reached Francis Street we signalled to get off, but the motor-man paid no attention to us. So we attempted to get off anyway, and in doing so slipped and fell under a wheel, doing severe injury to our leg. The fact is we were a little drunk at the time."

**Mildly Put.** Doubtless there are few lawyers, whose practice in early years may have taken them into country districts, but who will have recollections of the country justice; an intellectual type, whom none better than a lawyer can appreciate. Blessed with a profound confidence in his own knowledge, now and then cracking a joke with counsel, and as the hour for action approaches, seating himself upon a rickety chair behind a small table which has apparently done service in the family for at least two generations, surrounded by an open mouthed, expectant audience, baring his noble brow to the vulgar gaze, and with apparent feelings of regret, temporarily arraying himself with all the attributes of judicial dignity, he resolves himself into a court.

A tale, perhaps now twice told, is related of a certain justice of the peace from the State of Iowa, most learned in the law, who previous to the trial, having arrived at a conclusion upon a question of law highly satisfactory to himself, refused to entertain an argument by the opposing counsel. "If your Honor pleases," counsel pleaded. "I should like to cite a few authorities upon the point;" here he was sharply interrupted by the justice who stated, "The court knows

the law, and is thoroughly advised in the premises, and has given his opinion, and that settles it." "It was not," continued counsel, "with an idea of convincing your Honor that you are wrong, but I should like to show you what d—m fools these law writers are."

**Lost in a Haze.** "Officer," asked the Police Court Judge, "what made you think the prisoner was drunk?"

"Well, your Honor," as he was going along the sidewalk he ran plump into a street lamp-post. He backed away, replaced his hat on his head, and firmly started forward again, but once more ran into the post. Four times he tried to get by the post, but each time his uncertain steps took him plump into the iron pole. After the fourth attempt and failure to pass the post he backed off, fell to the pavement, and clutching his head in his hands, murmured, "Lost! Lost in an impenetrable forest!"

"Ten days," said the Court.—Exchange.

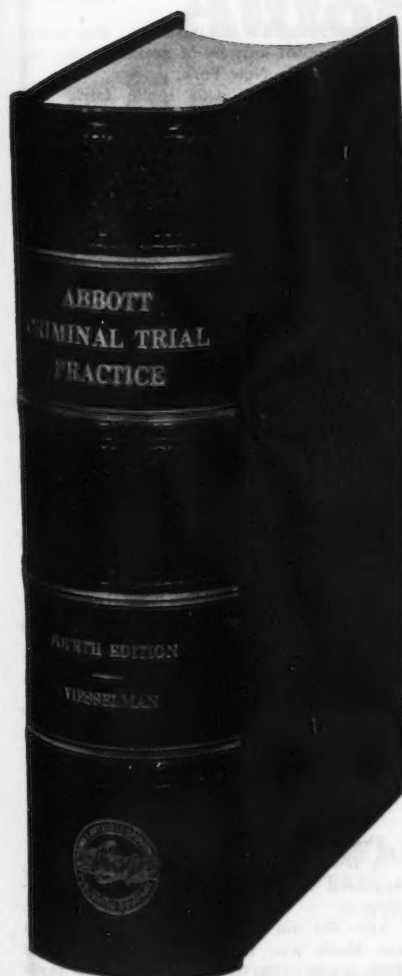
**A Modern Financier.** During the recent financial flurry, a German farmer went to the bank for some money. He was told that the bank was not paying out money, but was using cashier's checks. He could not understand this, and insisted on money. The officers took him in hand, one at a time, with little effect. Finally the president tried his hand, and after a long and minute explanation some intelligence of the situation seemed to be dawning on the farmer's mind. Finally, the president said: "You understand now fully how it is, Hans, don't you?" "Yes," said Hans, "I tink I do. It's like dis, aindt it? Ven by baby vakes up at night and vants some milk, I gif him a milk tick et."

**Friends, Romans, Countrymen.** An itinerant player, possessed of more wit than money, was driven by that hard master, hunger, to commit the crime of poaching in the neighborhood of Birmingham, and was, unluckily, detected in the act, and carried forthwith before a bench of magistrates, where the offense was fully proved. The knight of the buskin, however, being called on for his defence, astonished the learned justices by adapting Brutus's speech to the Romans on the death of Caesar, to his case, in the following manner:

"Britons, hungry men and epicures! Hear me for my cause, and be silent that you may hear; believe me for mine honor, and have

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## CASE AND COMMENT

respect to mine honor, that you may believe; censure me in your wisdom, and awake your senses that you may the better judge. If there be any in this assembly, any dear friend of this hare, to him I say that a player's love for hare is no less than his. If, then, that friend demand why a player rose against a hare, this is my answer: Not that I loved hare less, but that I loved eating more. Had you rather this hare were living, and I had died starving, than that this hare were dead, that I might live, a jolly fellow? As this hare was pretty, I weep for him; as he was nimble, I rejoice at it; as he was plump, I honor him; but as he was eatable, I slew him." Here the gravity of the court was obliged to give way; prosecutors, spectators, and all burst into laughter at the ready wit displayed by the "poor actor," and the information was withdrawn.—*Exchange*.

**External Medicine.** A Montana newspaper reports the arrest of a justice of the peace for alleged assault on a jocular witness. He was testifying in his own behalf on a trial for cruelty to a cow into which he had jabbed a pitchfork. Each question to the witness moved him to mirth, and he got more funny with every answer he made, until the justice dazed him by a hit on the jaw and by a stern kick as he disappeared through the door into the street. In defense of the justice, some of his friends alleged that his Honor did not strike the hilarious party because he thought it would be good for what ailed him physically; in other words, that he did not intend it for a wrong, but for a remedy. They said, also, that the patient was subject to epileptic fits, and that one of these was just coming on while he was testifying; that the judge saw this, and, having heard that a rap on the head would prevent such a fit from materializing, took the smash at the witness in the interest of good health. They triumphantly claimed that the remedy was effective, as the man had no fit. The complainant, however, took issue on the facts, denied that he ever had such a fit, or that the treatment would be a proper one if he had. He also claimed that the kick from behind was irrelevant to the alleged remedy.

**The Easy Way.** A lawyer who had been prevented by indisposition from being in court when his client was arraigned, arrived just when the trial was concluded (luckily, to the satisfaction of the defendant), modest-

ly remarked: "Perhaps I have saved my client from conviction by not defending him." This recalls the story of a witty attorney who was asked on returning from circuit how he had got on. "Well," was the reply, "I saved the lives of two or three prisoners." "Then you defended them for murder?" "No," was the rejoinder, "I prosecuted them for it."

Contributed.

**Qualifying for Citizenship.** The following are misfit answers of applicants for naturalization in New York.

One applicant, who spoke fairly good English, misunderstood one question. It was:

"Who elects the Judge?"

"I like him first rate," exclaimed the applicant with a look of fervent admiration at the Justice.

Another applicant got along all right until he was asked: "Do you believe in killing any President or official you don't like?"

"Why of course," he answered shrugging his shoulders nonchalantly.

"He doesn't understand," interposed a friend, horrified by the man's answer. The question was repeated.

"No, no, by God," came in shocked tones.

Another applicant, when asked who is governor of this state, indicated by a shrug of his shoulder that he did not know.

A sample of the questioning of those that led to their rejection is as follows:

"Do you believe in the American form of government?"

"Yes."

"Well, why?"

Applicant finally says he wants to be a citizen so as to live in the United States.

"Do you believe in polygamy?"

"Yes."

"What! Do you believe in having more than one wife?"

"If one dies, sometimes get another, yes?"

"Will you uphold the Constitution?"

"Yes. I work hard every day."

"What do they vote at election time?"

"Vote the Republicans."

A few days later, before another Justice, appeared some equally accomplished candidates.

One did not know what laws were, what the Mafia was, nor where the laws came from, except that George Washington made them. Another thought the Constitution

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was something to eat. But the star applicant, who had evidently heard or read some of the recent warm weather addresses at bar associations was positive that President Roosevelt was King of America, with life tenure of office.

**An Unwilling Witness.** About 1870 Judge Jas. O'Hara was Circuit Court Judge of the Twelfth Judicial District of Kentucky. One morning while court was in session at Brooksville, the following communication was handed up to the judge.

"Honorable Judge O'Harry, your honor, Dear Sir,—In the case of Martin McClanahan against Sam Murphy, and John Lenix, witness—I will state here as thoe I was on oath—John, so far as boddly and fisical strength is concerned he is able to go to Brooksville—Thoe here lies the whole thing—he have no nerve—it have failed him—His complante lays in the neck and head with a jerkin. He cannot speake at these time, and wood be a very poor witness for the Plaintiff, and this occurs when there is a crowd, at present his actions is something similar to what is called snakes in the boots, and is compeled to get away off to hisself before he recovers—he can't help this as it is inherited from both sides of the family he may be talking with you in good sense, and in one moment he is gone and will not return as long as you stay—such is the case.

"P. S. I am summins to attend court in a case between John Candy and John Gillispy—I have been confined to Bed and house sence October last with Rumatisn. I can git about with the aid crutchs & canes—about the yard—not able to go from home.

S. B. S.

"P. S. Ask John Candy what he wants to prove by me—John Candy has brought suit for work his boy done for John Gillispy. That I no nothing about—They are 10 miles from me. John Gillispy wants to prove by me John Candy stole 2 par of sox out of my store he can't get me to swear to that—I am no benefit to him only pine blank agin him on oath.

S. B. S."

**A Judge's Fate.** Much has been said concerning the inadequacy of the compensation paid to judges for the exercise of the judicial mind but Volume 66 Pacific 2nd, at page 951 reports a condition which should be brought to the attention of a benevolent bar, and particularly to the members of the

profession who aspire to the bench in Oklahoma.

That a tragic situation prevails in that state is suggested by the fact that an opinion in the case of Rich vs. State was rendered by a Judge, Barefoot.

Contributor: Woodrow D. White,  
Salt Lake, Utah.

**Out of the Mouths of Babies.** Little Marion heard her father telling about some trouble he was having with a neighbor concerning a piece of land. "He threatens to sue me," said her father. The next day the neighbor in question was coming toward the house with a bundle in his hand. Marion saw him coming and ran excitedly to her mother, exclaiming:

"O, mamma, Mr. Brown is coming now to sue papa! He's got his sue in his hand!"

—Exchange.

**Pastime of Jurors.** Citizen: "How long were you out?"

Juror: "You mean 'how much'?"

Citizen: "'How much' then?"

Juror: "Eleven dollars exactly."

Citizen: "Refreshments—eh?"

Juror: "Nope—draw poker."

—Exchange.

**There May Be Such a Thing.** According to the newspaper report of a recent decision in our Federal Court we have a new crime, viz.: "Conscientious participation in a gigantic fraud." (See Rocky Mountain News, September 15, 1938, reporting recent decision by Judge Murrah.)

Carle Whitehead.

—Dicta.

**To Be or Not to Be.** The police justice had been arguing with the still bibulous Thespian until his patience was exhausted.

"Guilty or not guilty, that is the question," the court said, finally.

"Y'ranner," answered the respondent, "You quote Shakespeare abominably."

—Exchange.

**One Black Cow.** The jury was listening to a suit on a replevin bond. One black cow seemed to have been missing. Her whereabouts was not known, and the reporter struck the first two verses of the following poem off during recess. After recess some witness swore one of the lawyers got the black cow. She then wrote the third

# CASE AND COMMENT

stanza. Her name is 'Gene Plasterer, and she writes lyrics as well as testimony.

That "One Black Cow"

Oh, hear my tale of the "one black cow;" She left the fold and they don't know how; The Franklin Security sent out the sheriff— 'Twas his solemn duty to promptly take care of

That "one black cow."

Oh where, oh where did that black cow go? Rex Emerick says that he don't know, Ralph Probst is sure that he won't tell it; It's up to the jury to try to smell it—

The whereabouts of that "one black cow."

L'Envoi:

We've found out where that black cow went: They tell us Rumbaugh had her sent To his office. (I wonder what for And what the learned lawyer got for

That "one black cow.")

Contributor: Clyde C. Carlin, Angola, Ind.

**A Springtime Fancy.** "Who is that lovely girl?" exclaimed a lawyer to his friend.

"Miss Glass," replied the learned counsel.

"Glass," reiterated the facetious judge. "I should often be intoxicated could I place such a glass to my lips."

**A Translator Needed.** A recently filed complaint in the Municipal court of Marion county, Indiana contained the following prayer:

"Whereforem okauftuff syes adb denabds hydgnebt agaubst tge defendants, herein and each of them both individually and collectively in the sum of \$112.00, his costs and all relief just and proper in the premises."

Contributor: Eugene B. Burns, Indianapolis, Ind.

**Not a Winner.** "And so you were playing poker for money?" said the western judge to the prisoner at the bar.

"No, sir; we were playing for chips."

"Well, it's all the same. You got your chips cashed for money at the end of the game, I suppose."

"No, sir."

"Why, how was that?"

"At the end of the game I didn't have any chips, your Honor."

"You're discharged."—*Exchange.*

**Ghosts in Court.** In the stately records of the Illinois Court there was recently uncovered the remarks of a Judge who later

donned the judicial robes of a Justice of the Supreme Court of the United States. The remarks were made when it was established that the defendant against whom a writ was issued was dead. Said the Judge:

"This was a dead, uncomplaining record in the Clerk's Office, until this writ was issued upon it. The writ has issued in the name of Goforth, who as the record shows, is a dead man. It will be frightful, indeed, if we must be brought into this court to answer dead men; it is bad enough to answer living ones. We have to meet the ghosts of dead men elsewhere. We do not wish to meet a dead man here, upon this dead record."

A motion to dismiss was sustained.

**The Eternal Problem.** "But, you must admit," said the masculine end of the controversy, "that woman is the weaker vessel."

"I'll admit nothing of the sort," rejoined the contrary female. "The mere fact that she seldom has to be bailed out is proof to the contrary."—*Retold Tales.*

**Describing a Nuisance.** Read this just as fast as you can.

"Dear Mr. Railroad Boss:

Is it absolutely necessary, in the discharge of his duty day and night, that the engineer of your yard engine make it ding and dong and fizz and spit and clang and bang and buzz and hiss and bellow and wail and pant and rant and yowl and howl and grate and grind and puff and bump and clink and clank and chug and moan and hoot and toot and crash and grunt and gasp and groan and whistle and wheeze and squawk and blow and jar and jerk and rasp and jingle and twang and clack and rumble and jangle and ring and clatter and yelp and croak and hum and snarl and puff and growl and thump and boom and clash and jolt and jostle and shake and screech and snort and snarl and slam and scrape and throb and crink and quiver and grumble and roar and rattle and yell and smoke and smell and shriek like hell?

Tell me, Mr. Boss, is it absolutely necessary?"

**Truth in Strange Places.** A petition for an injunction, based upon somewhat doubtful assertions of fact, recently came before an eastern justice. After considering the affidavit of the petitioner, he remarked:

## CASE AND COMMENT

"In this case an injunction will not lie, even if the relator does."

Under circumstances somewhat similar, an attorney sought to discredit statements contained in an affidavit.

"But counsel should remember," observed the Judge, "that the truth sometimes will out, even in an affidavit."—*Exchange*.

**Sleepy Time.** The following humorous incident occurred in the Wilson County Superior Court in Wilson, North Carolina: X being tried for Robbery—

Question: (By Private Prosecution) to Witness: Was he asleep?

Objection by Counsel for the Defense on the grounds that this matter was not the subject of opinion evidence.

By the Court: Gentlemen, if we don't get along a little faster in this case everyone in the Court Room will be asleep.

Contributor: W. D. P. Sharpe,  
Wilson, N. C.

**Colder Today.** Judge: "Do you solemnly swear to tell the truth, the whole truth and nothing but the truth."

Witness: "I do."

Judge: "What is your occupation?"

Witness: "I am employed in the weather bureau."

Judge: "You are excused."—*Exchange*.

**Lost or Regained Which?** From the district court records of Fannin County, Texas: Lucille Angel vs. Joe Angel, divorce—a matter of discord among the angels and "Paradise Lost."

Contributor: Myrtle Hancock,  
Bonham, Texas.

**Pretty Larceny.** "Would you call stealing a kiss larceny?" queried the inexperienced young man.

"I suppose so," replied the married man who was hustling from dawn to dusk to support his family.

"What is the penalty?"

"Why, I stole a kiss one time and was sentenced to hard labor for life."

—*Retold Tales*.

**Grounds.** "And if I should begin suit against him for breach of promise," asked Miss Passay, "and prove by numerous witnesses that he proposed to me, is there any possible way he could escape paying me damages?"

"He might," replied the attorney, thoughtfully. "He might set up a plea of insanity."

—*Exchange*.

**Also in a Hurry.** Judge: "I will give you just one hour to get out of town."

Trailer Tramp: "Well, if I'm brought back here for overspeeding me auto, don't blame me, jedge!"—*Exchange*.

**Constitutional Failure.** A Western lawyer, who enjoys a nip or two with his friends and does not object to occasionally making a night of it, returned to his home early one morning not long ago to confront an enraged and indignant wife. For many hours she had turned remonstrance and abuse over and over in her mind and was loaded when she turned loose on him. He stood it for nearly a half hour, attempting occasionally to interrupt with an explanation but with no avail, and finally shouted out so that he might drown her voice:

"The American Constitution—hic—insures to every citizen—hic—domestic tranquillity. I wish to—hic—God it—hic—would deliver the goods!"—*Exchange*.

**An Accident.** "The evidence shows," said the magistrate, "that this woman threw a brick at the complainant, her husband."

"Not so fast," interrupted counsel for the defense. "The appearance of the man is evidence that the brick hit him, which proves that she must have thrown it at somebody else."—*Retold Tales*.

**A New Experience.** A tramp was arrested in San Francisco, and when taken to the city prison his condition was so uncleanly that he was told by the corporal to strip and take a bath. "Vat, go in de water?" he asked. "Yes, take a bath; you need it. How long is it since you had a bath?" With his hands aligned upward, he answered: "I never vas arrested before."—*Exchange*.

**What's in a Change of Name.** I am enclosing a Notice taken from one of our local papers with reference to a change of name, which has brought a tremendous lot of laughs from people coming to our office. Notice to Whom It May Concern: You are hereby notified that the undersigned will file a Petition in the Circuit Court of Franklin County, Illinois, on the first Monday in July, 1938, to have his name changed from Stanley Dziejic to Stanley Bowoski and that he be permitted to assume the name of



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## CASE AND COMMENT

Stanley Bowoski and afterwards that he be called and known by such name.

Dated this 30th day of April A. D. 1938.

Stanley Dziezic.

May 5-12-1919.

Contributor: B. W. Eovaldi,  
Benton, Ill.

The polite and dignified paraphrasing of the District Court of Appeals of the Fourth District of California, in *Young vs. Young Holdings Corporation*, 80 Pac. 722, 735, of the well known statement that "Hell is paved with good intentions," is worthy of a place in Case and Comment, namely:

"Defendants urge that the foregoing by-law shows their good intentions, and their desire to aid the American Indian. If they ever entertained any such good intentions they were never carried out. They must have reserved such good intentions for use as proverbial paving blocks for the streets of that unexplored realm for which no righteous soul departs and from which no wicked soul returns."

Contributor: Harry Povey,  
Twin Falls, Ida.

**A Proof Reader's Nightmare.** In the case of *Kilpatrick v. Smith*, 32 Ga. Appeals Reports, page 44, (page 47), appears the following.

Judge Broyles, in writing the opinion, took occasion to refer to palpable errors in transcripts of records sent up to the court, which could have been avoided by a little proof-reading. The Court says:

"The record . . . shows that during the trial an ordinance was offered in evidence and objected to. Counsel asked that the discussion of its admissibility be argued in the absence of the jury. The record shows that—"when said ordinance was offered in evidence the court directed that the jury be executed, and the jury was executed."

"We can readily see that there are times when the judge should "excuse" a jury, but we know of no authority that he has to direct the execution of a dozen men without the semblance of a trial."

All trial lawyers have, no doubt, at times had occasion to wish the jury could be executed, and that they could act as the executioner.

Contributor: A. H. Gray,  
Blakely, Ga.

### Reservation.

"Mr. R. M. Waverly,  
Great Falls, Mont.

Pocatello, Idaho.  
Feb. 17, 1938

Dear Sir:

Yours of the 15th in regard to the chance of Mrs. Stone having a child in the future to hand and I thank you for the compliment. Mrs. Stone is seventy three years old and I am seventy four. We have never had any children.

If, however, an affidavit is necessary, if you will prepare a form that you will require we will be willing to sign but hope there will be nothing in the instrument prohibiting us from trying.

(Signed) Yours very truly,  
S. M. Stone."

Contributor: John S. Murphy  
Sioux Falls, S. D.

**Laxative Justice.** The following letter from a Filipino boy was received.

"Justice of the Peace  
Fontana, Calif.

Your honor—

As a law abiding citizen, I hereby plead guilty. However, although I am aware of the fact that sentiment does not support my cause, I may ask your honor to look at my case with a sense of laxative mercy as I am now unable to meet the situation financially. I rest, therefore my hope on your honor's consideration.

Most respectfully,  
G. B."

Contributor: John A. Hadaller,  
San Bernardino, Calif.

**Murder in the Classroom.** Student (to professor in English literature)—What subject are you going to give us tomorrow, professor?

Professor—Tomorrow we shall take the life of Robert Louis Stevenson. So come prepared.—*Exchange.*

**A New Death.** This story was told by Hon. James Park, Commonwealth Attorney, at a banquet of the Lexington Bar Association.

Two criminals were talking about the testimony they had given in a case which Mr. Park was prosecuting. One of the pair said:

"Don't you know they can hang you for that?"

"Oh, I am not afraid of that," his companion answered. "They only kill by elocution in this state."

—Ky. Bar Ass'n. Journal.

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